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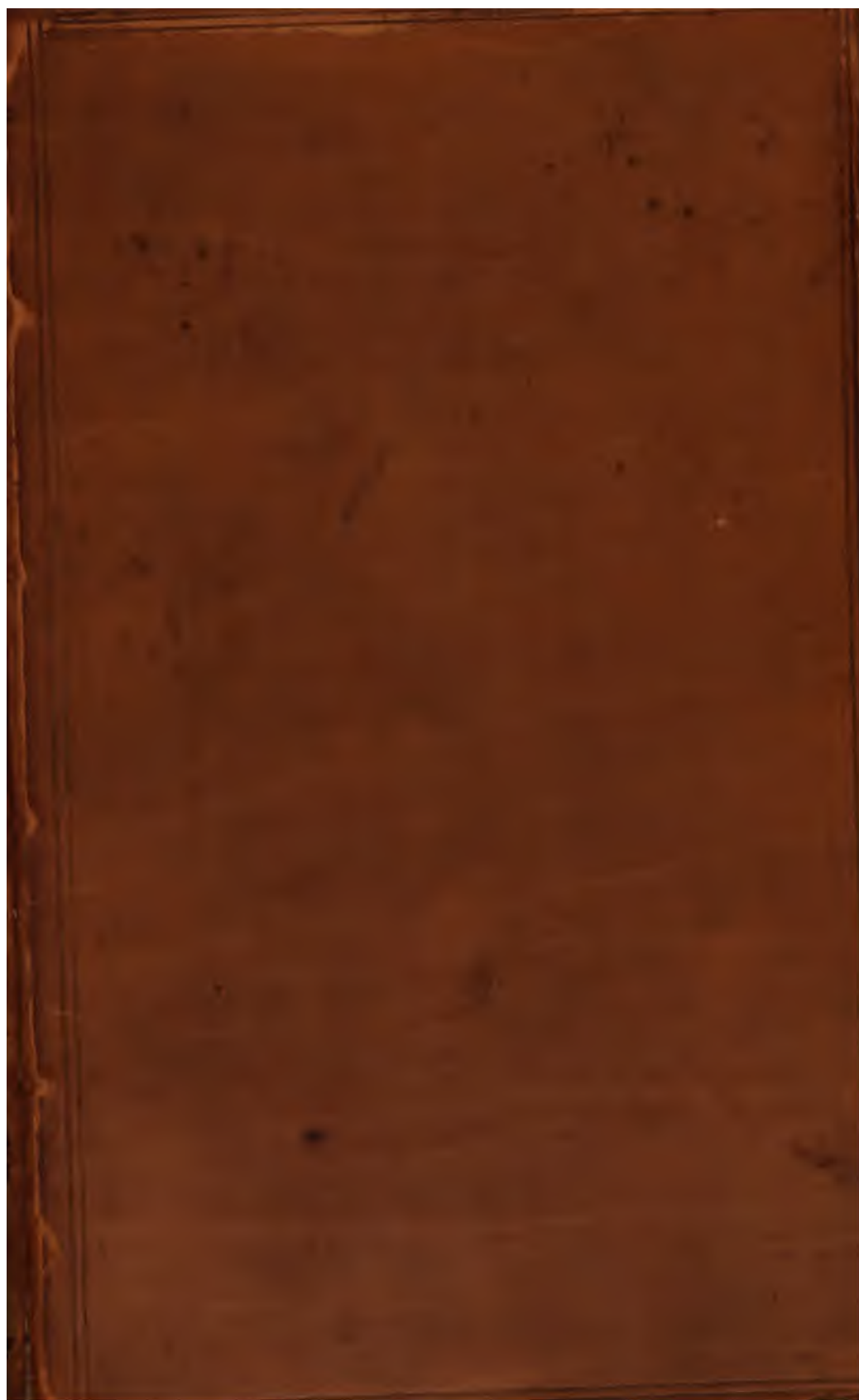
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A
S U P P L E M E N T
TO
DEACON'S DIGEST
OF
The Criminal Law of England,

CONTAINING
A DIGEST OF ALL THE RECENT STATUTES AND
CROWN CASES.
AND
A COMPLETE DIGEST OF THE LAW AGAINST
OFFENCES RELATING TO THE COIN.

By **W. M. HINDMARCH, Esq.**

OF GRAY'S INN, BARRISTER AT LAW.

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THE alterations in the CRIMINAL LAW, since the publication of Mr. Deacon's Work, having been both numerous and important, this SUPPLEMENT has been prepared for the accommodation of the purchasers of that Work.

The various Acts of Parliament relating to this branch of the Law, which have been passed during the last five years, have been digested and arranged so as to be of easy reference and to shew at one view the various changes which have been effected. This Supplement will also be found to contain a digest of nearly all the Crown cases which have been published during the last five years,—many of them, it is true, upon minor points of practice in the Criminal Law, but, nevertheless, important to be noticed, not only for the convenience of the practitioner, but as tending to produce a uniformity in decision and practice in this branch of our Law, in which certainty is so very desirable an object.

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For the reasons stated by Mr. Deacon in his Preface the article "COIN" was reserved for a supplementary treatise, and it will be found in the following pages.

For the convenience of reference, the Addenda, which was originally appended to the Digest, has been cancelled, and such parts of it as have not been rendered unnecessary by subsequent changes have been inserted in this Supplement.

The same arrangement of the subject has been adopted in the Supplement as in the Digest itself, and constant references have been made to the titles, pages, &c., in the latter.

In order to afford further facility of reference, a Table of the Titles, &c., contained both in the Digest and the Supplement is prefixed to the first volume of the work, and a new and enlarged Table of all the cases digested or cited is given.

W. M. HINDMARCH.

2, INNER TEMPLE LANE,
February, 1836.

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Doug.	- -	- Douglas's Reports.
D. & R.	- -	- Dowling and Ryland's King's Bench Reports.
D. & R. N. P. C.	- -	- Dowling and Ryland's Nisi Prius Cases.
Dow.	- -	- Dow's Reports.
Dow. P. C.	- -	- Dowling's Practice Cases.
D. & E.	- -	- Durnford and East's Reports.
Dy.	- -	- Dyer's Reports.
E. T.	- -	- Easter Term.
East	- -	- East's Reports.
East, P. C.	- -	- East's Pleas of the Crown.
Esp.	- -	- Espinasse's Nisi Prius Reports.
Evans's Stat.	- -	- Evans's Collection of Statutes.
Finch. L.	- -	- Finch's Law.
Fitzgib.	- -	- Fitzgibbon's Reports.
Fitz.	- -	- Fitzherbert's Abridgment.
F. N. B.	- -	- Fitzherbert's Natura Brevium.
Fl.	- -	- Fleta.
Forrest	- -	- Forrest's Reports.
Forrester	- -	- Forrester's Reports.
Fortes.	- -	- Fortescue's Reports.
Fost.	- -	- Foster's Crown Law.
Freem.	- -	- Freeman's Reports.

Table of Abbreviations.

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Gilb.	-	-	-	Gilbert's Reports.
G. & J.	-	-	-	Glyn and Jameson's Reports.
Godb.	-	-	-	Godbolt's Reports.
Golds.	-	-	-	Goldsborough's Reports.
Gow.	-	-	-	Gow's Nisi Prius Reports.
Hagg.	-	-	-	Haggard's Ecclesiastical Reports.
Hale, or H. P. C.	-	-	-	Hale's Pleas of the Crown.
Hard.	-	-	-	Hardres' Reports.
Hawk. P. C.	-	-	-	Hawkin's Pleas of the Crown.
H. B.	-	-	-	Henry Blackstone's Reports.
H. T.	-	-	-	Hilary Term.
Hob.	-	-	-	Hobart's Reports.
Holt.	-	-	-	Holt's Reports.
Holt on Lib.	-	-	-	Holt on Libel.
How. St. Tr.	-	-	-	Howell's State Trials.
Hut.	-	-	-	Hutton's Reports.
Inst.	-	-	-	Coke's Institutes.
Jac.	-	-	-	Jacob's Reports.
J. & W.	-	-	-	Jacob & Walker's Reports.
Jon. 1, 2.	-	-	-	Jones', W. & T., Reports.
Keb.	-	-	-	Keble's Reports.
Keil.	-	-	-	Keilway's Reports.
Kel.	-	-	-	Kelinge's Reports.
K. B.	-	-	-	King's Bench.
Lamb.	-	-	-	Lambard.
Lat.	-	-	-	Latch's Reports.
Leach, or Leach, C. C.	-	-	-	Leach's Crown Cases
Leon	-	-	-	Leonard's Reports.
Lev.	-	-	-	Levin's Reports.
Lew. C. C.	-	-	-	Lewin's Crown Cases.
Lil. Abr.	-	-	-	Lilly's Abridgment or Practical Register.
Lofft.	-	-	-	Lofft's Reports.
Lut.	-	-	-	Lutwyche's Reports.
M'Clel.	-	-	-	M'Clelland's Reports.
M'Clel. & Y.	-	-	-	M'Clelland and Younge's Reports.
Madd.	-	-	-	Maddock's Reports.
M. & Ry.	-	-	-	Manning and Ryland's King's Bench Reports.
March.	-	-	-	March's Reports.
Marsh.	-	-	-	Marshall's Reports.
M. & S.	-	-	-	Maule and Selwyn's Reports.
M. T.	-	-	-	Michaelmas Term.
Mir.	-	-	-	Mirror.
Mod.	-	-	-	Modern Reports.
M. & M.	-	-	-	Moody and Malkin's Nisi Prius Reports.
Mo. & Rob.	-	-	-	Moody and Robinson's Nisi Prius Reports.
Moore	-	-	-	Moore's Reports.
M. & P.	-	-	-	Moore and Payne's Reports.
Mo. & Sc.	-	-	-	Moore and Scott's Reports.

New Nat. Brev.	-	-	New Natura Brevium.
N. R.	-	-	New Reports by Bosanquet and Puller.
Noy	-	-	Noy's Reports.
O. B.	-	-	Old Bailey.
O. B. S.	-	-	Old Bailey Sessions.
Ow.	-	-	Owen's Reports.
Pal.	-	-	Palmer's Reports.
Par.	-	-	Parker's Reports.
Peake	-	-	Peake's Nisi Prius Reports.
Peake. Ev.	-	-	Peake's Evidence.
P. Wms.	-	-	Peere Williams' Reports.
Phill.	-	-	Phillimore's Ecclesiastical Reports.
Phill. Ev.	-	-	Phillipp's Evidence.
P. C.	-	-	Pleas of the Crown.
Plow.	-	-	Plowden's Reports.
Poph.	-	-	Popham's Reports.
Pri.	-	-	Price's Reports.
Rast.	-	-	Rastall's Entries.
Raym.	-	-	Raymond.
Ld. R.	-	-	Lord Raymond's Reports.
T. Ray. or Ray. T.	-	-	Sir Thomas Raymond's Reports.
Rep.	-	-	Reports, or Coke's Reports.
Rep. temp. Hard.	-	-	Reports tempore Hardwicke.
Ro. or Rolle.	-	-	Rolle's Reports.
Ro. Abr.	-	-	Rolle's Abridgment.
Rose	-	-	Rose's Reports.
Russ. or Russ. C. & M.	-	-	Russell on Crimes and Misdemeanors.
R. & R. or R. & R. C. C.	-	-	Russell and Ryan's Crown Cases.
R. & M. or R. & M. C. C.	-	-	Ryan and Moody's Crown Cases.
R. & M. N. P. C.	-	-	Ryan and Moody's Nisi Prius Cases.
Salk.	-	-	Salkeld's Reports.
S. C.	-	-	Same Case.
S. P.	-	-	Same Point.
Saund.	-	-	Saunders' Reports.
Sav.	-	-	Saville's Reports.
Seld.	-	-	Selden.
Selw. N. P.	-	-	Selwyns' Nisi Prius.
Sess. Cas.	-	-	Sessions' Cases.
Show.	-	-	Shower's Reports.
Sid.	-	-	Siderfin's Reports.
Skin.	-	-	Skinner's Reports.
Smith	-	-	Smith's Reports.
Spel.	-	-	Spelman.
Stark. or Stark. R.	-	-	Starkie's Nisi Prius Reports.
Stark. on Lib.	-	-	Starkie on Libel.
Stark. Ev.	-	-	Starkie on Evidence.
Stark. Cr. Pl.	-	-	Starkie's Criminal Pleading.
St. Tr.	-	-	State Trials.
Staunf.	-	-	Staunford's Pleas of the Crown.
Str.	-	-	Strange's Reports.

Table of Abbreviations.

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Sty.	-	-	-	Style's Reports.
Swanst.	-	-	-	Swanston's Reports.
Taunt.	-	-	-	Taunton's Reports.
T. R.	-	-	-	Term Reports.
Trem.	-	-	-	Tremaine's Pleas of the Crown.
T. T.	-	:	-	Trinity Term.
Tyr.	-	-	-	Tyrwhitt's Reports,
Vaug.	-	-	-	Vaughan's Reports.
Vent.	-	-	-	Ventris' Reports.
Ves. or Ves. Jun.	-	-	-	Vesey, Jun.'s Reports.
Ves. Sen.	-	-	-	Vesey, Sen.'s Reports.
Vin. Abr.	-	-	-	Viner's Abridgment.
Will.	-	-	-	Willes' Reports.
Wils.	-	-	-	Wilson's Reports.
Winch.	-	-	-	Winch's Reports.
Yel.	-	-	-	Yelverton's Reports.

ERRATA ET CORRIGENDA.

NOTE.—t. means counting from the top of the page, b. from the bottom.

Page.	Line.	
14 ..	4 t.	for East, P. C. read 2 East, P. C.
15 ..	8 b.	for R. v. Young, read Young v. Rex.
20 ..	38 t.	for 1 Car. & P. read 2 Car. & P.
33 ..	8 t.	for 8 Co. 310, read 8 Co. 156, a.
— ..	3 b.	ditto ditto.
39 ..	22 t.	for R. v. Shropshire, read R. v. Staffordshire.
51 ..	19 t.	for Semayne's Case, Cro. Eliz. 909, read Seyman v. Gresham, [Cro. Eliz. 908.]
55 ..	8 b.	for 2 East, read 2 East, P. C.
— ..	9 b.	after R. v. Pedley insert 1 Leach, C. C.
— ..	10 b.	for Breame's Case, read Breeme's Case.
60 ..	3 t.	for Str. 835, read 2 Str. 835.
62 ..	19 t.	read 1 Mod. 3, 2 Keb. 545.
64 ..	4 t.	for Selw. N. P. 33, read Selw. N. P. 28.
— ..	1 b.	for Lane v. Degberg, read Lane v. Hegberg.
65 ..	10 b.	for 1 Bos. & P. 121, read 1 Bos. & P. 191.
86 ..	17 t.	for Russ. 64, read Russ. 46.
— ..	40 t.	ditto ditto.
89 ..	1 t.	for 6 B. & A. read 1 B. & C.
91 ..	13 t.	for 1 Carr. & P. read 2 Carr. & P.
95 ..	29 t.	ditto ditto.
96 ..	16 t.	for Embden, read Emden.
97 ..	7 b.	for 1 Carr. & P. read 2 Carr. & P.
98 ..	13 t.	ditto ditto.
104 ..	13 b.	for Mod. 44, read Mod. 144.
117 ..	8 t.	for Astlett, read Aslett.
— ..	1 b.	ditto ditto.
— ..	8 b.	ditto ditto.
152 ..	18 t.	for Larceny, XV. read Larceny, IV.
158 ..	5 & 6 t.	for Macarty v. Wickford, 3 Bac. Abr. 195, read Maccarty v. Wickford, 6 Bac. Abr. 23, 24.
— ..	26 t.	after Godolphin v. Tudor insert Bro. P. C. 185.—Culliford and [Cardinel.]
161 ..	28 t.	for Hume, read Hearn.
169 ..	4 t.	for 7 E. R. read 7 East.
179 ..	11 b.	for Larceny, X. read Larceny, III.
181 ..	11 t.	for Russ. & Ry. 185, read Russ. & Ry. 157.
— ..	22 t.	after 2 C. & P. add 628.
185 ..	25 t.	for Castel's, read Castle's.
— ..	4 b.	for Finch's, read Fynche's.
186 ..	15 b.	for Stockton, read Stock.
189 ..	15 t.	after Williams insert 1 Hale.
— ..	5 b.	for Margath, read Margetts.
193 ..	8 b.	for Russ. 944, read Russ. 34.
204 ..	28 t.	for 1 East, P. C. read 2 East, P. C.
— ..	37 t.	for 1 Carr. & P. read 2 Carr. & P.
208 ..	14 t.	for Lodiard, read Lediard.
— ..	22 t.	for Mayor's, read Mayo's.

Errata et Corrigenda.

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- Page. Line.
- 214 .. 16 b. *for* Barnaby, *read* Burnaby.
- 215 .. 8 b. *for* Leverman, *read* Levermore.
- 216 .. 14 t. *for* Salk, 365, *read* Salk. 565.
- 218 .. 10 b. *for* R. v. Jenkins, *ibid.* *read* R. v. Jenkinson, 1 T. R. 82.
- 227 .. 17 b. *for* R. v. Young, *read* Young v. Rex.
- 228 .. 17 t. *for* Str. 886, *read* Str. 866.
- 229 .. 12 b. *for* R. v. Young, *read* Young v. Rex.
- 231 .. 7 t. *for* Carring, 334, *read* Carring. Sup. 333.
- 233 .. 9 t. *for* Leach, 194, *read* Leach, 174.
- .. 3 b. *for* R. v. Howarth, 2 Star. 26, *read* R. v. Howarth, 3 Star. R. 26.
- 234 .. 12 t. *for* R. v. Young, *read* Young v. Rex.
- 245 .. 18 t. *for* Larceny, V. *read* Larceny, V.
- 256 .. 15 b. *for* Fort. *read* Fortes.
- 257 .. 30 t. *for* 2 Salk. *read* 1 Str.
- 260 .. 12 t. *for* Everett, *read* Evered.
- 261 .. 18 t. *for* Ld. Ray. 515, *read* Ld. Ray. 545.
- 263 .. 2 t. *for* Ld. Ray. 1575, *read* Ld. Ray. 1514.
- 279 .. 11 b. *for* Bowler, *read* Fowler.
- 287 .. 15 t. *for* 1 Bac. Ab. 439, *read* 2 Bac. Ab. 167.
- 288 .. 2 t. *for* Lane *read* Lone.
- 290 .. 6 t. *for* Ld. R. 345, *read* Ld. R. 545.
- .. 13 b. *for* Exp. *read* Esp.
- .. 17 b. *for* Medhurst v. Waite, *read* Midhurst v. Waite.
- 293 .. 1 b. *for* Straight, *read* Staight.
- 306 .. 5 t. *for* Midlum, *read* Midlam.
- .. 9 t. *for* Allan, 15 East, 332, *read* Allen, 15 East, 333.
- 307 .. 22 b. *for* 2 Burr. *read* 4 Burr.
- 309 .. 21 t. *for* Hooke, *read* Hooker.
- .. 25 t. *for* T. R. 122, *read* T. R. 222.
- 315 .. 28 t. *for* 2 Str. *read* 1 Str.
- .. 10 b. *for* Atkins, Burr. *read* Aikin, 3 Burr.
- 316 .. 18 t. *for* Aiken, *read* Aikin.
- 323 .. 11 t. *for* T. R. 433, *read* T. R. 238.
- 325 .. 9 t. *for* Cripps, *read* Crepps.
- .. 21 t. *for* Milligan, *read* Milliken.
- 328 .. 3 t. *for* Larceny, X. *read* Larceny, III.
- 331 .. 22 t. *for* Solyard, *read* Solgard.
- 334 .. 19 t. *for* Burney, *read* Bunney.
- 335 .. 15 b. *for* 4. 7 R. *read* 4 T. R.
- 341 .. 16 b. *after* Chit. Rep. *add* 650.
- 342 .. 5 & 6 b. *for* R. v. Burk, 2 T. R. 197, *read* R. v. R. Brooke, 2 T. R. 190.
- 343 .. 27 t. *for* 4 Burr. *read* 3 Burr.
- 351 .. 25 t. *for* Russ. & Ry. 300, *read* Russ. & Ry. 360.
- 353 .. 21 b. *for* 2 Leach, *read* 1 Leach.
- 354 .. 17 t. *for* Clark, *read* Clerk.
- 356 .. 21 t. *for* Camp. 634, *read* Camp. 654.
- 380 .. 9 b. *for* 1 Carr. & P. *read* 2 Carr. & P.
- 389 .. 8 b. *for* 2 Str. *read* 2 Stark. R.
- 391 .. 11 & 12 t. *for* Star. on Ev. pt. IV. p. 23, *insert* 2 Star. Ev. 12.
- .. 18 t. *for* Bruton, *read* Brunton.
- 394 .. 19 b. *for* Leach, 455, *read* Leach, 408.
- .. 13 b. *for* Leach, 237, *read* Leach, 199.
- .. 11 b. *for* 2 Str. *read* 1 Str.
- 400 .. 4 t. *for* Leach, 151, *read* Leach 115.
- 415 .. 3 t. *for* Hodson, *read* Hodgson.
- 422 .. 23 t. *for* 202, *read* 232.
- 423 .. 18 t. *for* Tinkler, *read* Tinckler.
- 426 .. 24 t. *after* R. v. Gilham *add* R. & M. C. C. 186.
- 431 .. 9 b. *for* Burson, *read* Benson.
- 434 .. 14 b. *for* Cropley, 2 Esp. 524, *read* Crossley, 2 Esp. 526.
- 446 .. 9 b. *for* B. & C. 339, *read* B. & C. 441.
- 455 .. 1 t. *for* 1 Carr. & P. *read* 2 Carr. & P.
- .. 19 b. *for* Sull, *read* Sulls.
- 457 .. 15 b. *for* R. & M. N. P. C. *read* R. & M. C. C. 139.
- 461 .. 27 & 28 t. *for* R. & M. 158, *read* R. & M. 154.
- 462 .. 25 t. *for* R. v. Young, *read* Young v. Rex.

- Page. Line.
 462 .. 25 t. *for* 3 Camp. *read* 2 Camp.
 463 .. 22 t. *for* *ibid.* 385, *read* *ibid.* 345.
 464 .. 16 b. *for* Camp. 440, *read* Camp. 398.
 466 .. 18 b. *for* Bos. & P. 582, *read* Bos. & P. 532, n. (a).
 476 .. 9 b. *for* R. v. Young, *read* Young v. Rex.
 488 .. 24 b. *for* 1 G. IV. c. 54, *read* 1 Geo. IV. c. 108.
 491 .. 12 t. *for* Larceny, XIII. *read* Larceny, III.
 515 .. 2 b. *for* Davies, *read* Davis.
 540 .. 4 t. *for* Larceny, XVII. *read* Larceny, III.
 541 .. 8 t. ditto ditto.
 542 .. 22 b. *after* R. v. Williams *insert* 2 Burn. J. (25 Ed.) p. 727.
 574 .. top, *for* (repair), *read* (diverting).
 582 .. 23 t. *for* Ld. R. 898, *read* Ld. R. 858.
 592 .. 8 b. *for* Hertford, Cowp. *read* Hartford, 1 Cowp.
 597 .. 8 b. *for* Yarnnton, *read* Yarton.
 642 .. 18 t. *for* Carlisle, *read* Carille.
 644 .. 19 t. *for* George, 3 Salk. 188, *read* Gorge, 3 Salk. 189.
 — .. 22 b. *for* Burr. 266, *read* Burr. 2106.
 654 .. 6 t. *for* Leach, 556, *read* Leach, 495.
 — .. 27 t. *after* 6 East *insert* 419.
 681 .. 10 t. *for* 1 Carr. & P. *read* 2 Carr. & P.
 702 .. 21 t. *for* Charwick, *read* Charnock.
 719 .. 25 t. *after* Davis v. Copper *insert* 10 B. & C. 28.
 722 .. 26 t. ditto ditto.
 724 .. 14 t. *for* Brigg, *read* Bigg.
 747 .. 16 b. *for* 2 Leach, *read* 1 Leach.
 753 .. 1 b. *for* East, P. C. 699, *read* East, P. C. 669.
 760 .. 14 b. *for* Davies, *read* Davis.
 761 .. 12 t. *after* R. v. Ialey *insert* 1 Leach.
 773 .. 1 t. *for* Banel, *read* Burnel.
 779 .. 15 b. *for* Id. 457, *read* 1 C. & P. 457.
 — .. 11 b. *after* R. v. Burton *insert* R. & M. C. C. 237.
 780 .. 29 t. *for* 2 Star. Rep. 76, *read* 3 Star. Rep. 70.
 785 .. 21 & 22 t. *for* Russ. & Ry. 136, *read* Russ. & Ry. 225.
 802 .. 2 t. *for* Burr. 817, *read* Burr. 807.
 803 .. 17 b. *for* R. v. Carlisle, *read* R. v. Mary Carlile.
 804 .. 4 t. *for* 1 East, *read* 7 East.
 806 .. 23 t. *for* Astley, *read* Ashley.
 809 .. 16 b. *for* 1 Car. & P. *read* 2 Car. & P.
 810 .. 19 b. *for* Burke, *read* Burks.
 812 .. 14 b. *for* 1 Car. & P. *read* 2 Car. & P.
 815 .. 7 b. *for* Pearo, *read* Pearce.
 818 .. 25 t. *for* Lovet, *read* Lovell.
 835 .. 12 b. *for* Id. 397, *read* Id. 259.
 — .. 11 b. *for* *Ibid.* *read* 1 East, P. C. 398.
 837 .. 24 t. *for* R. & R. 404, *read* R. & R. 104.
 854 .. 17 t. *for* East, P. C. 536, *read* East, P. C. 236.
 855 .. 9 t. *for* Hazil, *read* Hazel.
 867 .. 26 b. *for* R. v. Softly, *read* Ex parte Softly.
 878 .. 28 t. *for* 2 C. & P. *read* 3 C. & P.
 903 .. 11 b. *for* Edwards, *read* Edmeads and others.
 905 .. 6 t. ditto ditto.
 — .. 8 b. *for* Plow. 97, *read* Plow. 100.
 927 .. 16 b. *after* 5 Co. *insert* 120 a.
 929 .. 17 t. *for* R. v. Fye, *read* R. v. Tye.
 — .. 19 b. *for* 1 C. & P. *read* 2 C. & P.
 933 .. 11 b. *for* Carring. C. L. 202, *read* Carring. C. L. 232.
 936 .. 12 t. *for* Lawyer, *read* Sawyer.
 942 .. 16 t. *for* Milton's, *read* Mitton's.
 948 .. 11 t. *for* Indictment, VII. *read* Indictment, VI.
 950 .. 23 t. *for* Johayle's, *read* Tohayle's.
 951 .. 8 t. *for* Str. 764, *read* Str. 704.
 953 .. 11 b. *for* 3 Burr. *read* 1 Burr.
 954 .. 8 b. *for* East, 127, *read* East, 164.
 959 .. 18 b. *for* Moore, *read* Moore and others.
 962 .. 1 b. *for* 3 East, *read* 8 East.

Errata et Corrigenda.

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Page.	Line.	
963	.. 14 t.	for 3 East, read 8 East.
967	.. 27 t.	for 4 T. R. 542, read 3 T. R. 499.
978	.. 8 t.	for Str. 1211, read Str. 1268.
1013	.. 2 b.	for Camp. 104, read Camp. 404.
1017	.. 12 b.	after Perjury, (c). add p. 160.
1020	.. 16 b.	for Id. 1184, read Id. 1104.
1035	.. 24 t.	for 28 G. 2, read 28 G. 3.
1085	.. 6 t.	after 1 Leach, insert 430.
1099	.. 23 t.	for Vintr. read Ventr.
1137	.. 24 b.	for C. & P. 79, read C. & P. 479.
1145	.. 16 t.	for East, P. C. 703, read East, P. C. 783.
1154	.. 24 t.	for Cripps, read Crepps.
1156	.. 17 b.	for C. & P. 535, read C. & P. 585.
1165	.. 10 t.	for R. & R. 174, read R. & R. 74.
1190	.. 15 b.	for East, 473, read East, 173.
1191	.. 23 b.	for Turncock, read Turnock.
1194	.. 15 b.	for 1 T. R. read 2 T. R.
1259	.. 24 t.	for 1262, read 1261.
1263	.. 17 b.	for 1 Leach, read 2 Leach.
1278	.. 1 b.	for C. & P. 629, read C. & P. 635.
1293	.. 13 t.	for Southern read Southerton.
1340	.. 3 b.	for 2 Burr. 1514, read 3 Burr. 1513.
1342	.. 20 t.	for 6 T. R. read 6 East.
1357	.. 1 t.	for R. & M. 44, read R. & M. 45.
—	.. 6 t.	for M'Donagh Carringt. Suppl. 23, read M'Donagh Carringt. Suppl. [24.
1358	.. 4 t.	for East, 184, read East, 164.
1363	.. 7 t.	for Thirwell, 5 Burr. read Thirkell, 3 Burr.
1378	.. 26 t.	for Mod. 355, read Mod. 335.
1379	.. 1 & 2 t.	for R. v. Draper, R. & M. 234, read R. v. Archer, R. & M. C. C. [143.
1380	.. 3 b.	for Burr. 342, read Burr. 542.
1393	.. 4 b.	for Leach, 173, read Leach, 175.
1397	.. 15 b.	for P. C. 958, read P. C. 957.
1405	.. 2 t.	for Davies, read Davis.
1410	.. 4 t.	for R. & R. 205, read R. & R. 505.
1412	.. 4 t.	for 2 Leach, read 1 Leach.
1414	.. 13 & 12 b.	for 2 East, 928, read 2 East, P. C. 938.
—	.. 12 b.	for 2 Leach, 54, read 1 Leach, 540.
1415	.. 7 t.	ditto ditto.
1458	.. 29 t.	for (e). read (c).
1471	.. 11 t.	for Lovett, read Lovell.
1474	.. 3 b.	for 2 Salk. read 3 Salk.
1494	.. 6 t.	for Brittain, read Bitton.
1505	.. 29 t.	read 11 G. 4, & 1 W. 4. c. 64.
1506	.. 12 t.	dele to, after told.
1507	.. 22 b.	for the indictment, read an indictment.
—	.. 7 b.	read present at the.
1508	.. 15 t.	for country, read county.
1509	.. 2 t.	read Inhabitants of Lancashire.
—	.. 16 & 17 b.	for Kingstone, read Kingston.
1510	.. 6 t.	dele cellar flap (marginal note) and insert it opposite, line 8 t.
1511	.. 4 t.	for too full, read too-fall.
1531	.. 8 t.	read 4 C. & P. 236.
1535	.. 1 t.	for Fulsa, read Falsa.
1538	.. 3 t.	dele and after &c.
1548	.. 22 t.	marginal note, for misdemeanors, read misdemeanor.
1563	.. 5 t.	for Woolridge, read Wooldridge.
—	.. 15 t.	for exception, read reception.
—	.. 20 b.	for promissary, read promissory.
—	.. 17 b.	for 2 & 3 W. 3. read 2 & 3 W. 4.
1564	.. 11 t.	for being, read been.
—	.. 14 t.	read she (not having been, &c.)
—	.. 6 b.	for Thompson, read Thomson.
1565	.. 1 t.	for actual, read actually.
1568	.. 11 t.	marginal note, for panel, read parol.
1573	.. 8 b.	for burghs, read boroughs.
1578	.. 3 b.	read 7 G. 4.

Page.	Line.
1579 ..	12 b. read 3 B. & Ad. 237.
1581 ..	4 b. read 6 G. 4. c. 112.
1596 ..	20 t. for Potter read Porter.
1611 ..	5 t. read 9 B. & C. 549.
1612 ..	5 t. read 11 G. 4. & 1 W. 4.
1634 ..	2 & 3 t. read, and not for this country to interfere on the subject. Ex-
1646 ..	12 t. read ante page 1638. [parts, Susannah Scott.
1653 ..	21 t. for 2 B. & Ald. read 2 B. & Ad.
— ..	4 b. for Court, read Count.
1655 ..	12 t. for refused, read refuses.
1662 ..	3 t. for promissary, read promissory.
1664 ..	11 b. for ojection, read objection.
1665 ..	18 t. for carcasses, read carcasses.
1669 ..	13 b. read R v. William Jones.
1670 ..	1 b. for latter, read letter.
1672 ..	10 b. read 1 Tyrw.
1703 ..	15 b. for Phelp, read Philp.
1723 ..	6 t. read 1 G. 1. st. 2.
1733 ..	1 t. for but, read the.
1739 ..	6 t. for Harris, read Harrie.

By the 6 & 7 W. 4. c. 4. a clerical error in the 5 & 6 W. 4. c. 81. is amended;—the latter act to be read as if containing the words “in the said acts so specified,” instead of “in the said act so specified.”—And it is further enacted that all persons who may thereafter (*Royal Assent*, 18 March, 1836,) be convicted of the offences mentioned in the 5 & 6 W. 4. c. 81., shall and may be sentenced to transportation for life, or not for less than seven years, or to be imprisoned not exceeding three years, with or without hard labour, and for any period of solitary confinement, during such imprisonment, at the discretion of the Court or Judge. See *Capital Punishment*, p. 1513.—*Post Office*, p. 1711.—and *Sacrilege*, p. 1725.

It will be observed that the above act reduces the maximum period of imprisonment from four to three years, and adds a power of ordering solitary confinement.

SUPPLEMENT

TO

DEACONS' CRIMINAL LAW.

Abortion.

PAGE 8. § 4.—According to a late decision of *Mr. Baron Vaughan*, the noxious or innoxious nature of the thing administered to procure abortion is immaterial. The prisoner was indicted under the 9 G. 4. c. 31. s. 13. for administering saffron with intent to procure abortion; and on the counsel for the prisoner, cross-examining as to the nature of the article administered, the learned baron said, “Does that signify? it is with the *intention* the jury have to do; and if the prisoner administered a bit of bread merely *with intent to procure abortion*, it is sufficient to constitute the offence contemplated by the act of Parliament.” *R. v. Coe*, 6 C. & P. 403. It does not appear from the report of this case, whether the indictment was framed under the first or last clause of the section of the act of Parliament, but it seems that the case is not within the former clause, the words of which are, shall administer “any poison or other noxious thing, or shall use any instrument or other means whatever.” But the words of the latter clause, respecting administering to a woman not *quick* with child, are, “any medicine or other thing.” It is therefore to be inferred, that the prisoner was indicted under the latter clause of that section.

Nature of thing administered.

Page 9. § 6.—In a recent case, where the prisoner was indicted under 43 G. 3. c. 58. s. 2. for administering to a woman a drug, with intent to procure miscarriage, she at the time “being with child,” but not “quick with child;” and it appeared that the woman was *not with child at all*; it was held by the twelve Judges, that the prisoner must be acquitted, although he really thought that she was with child at the time, and gave her the drug, with intent to destroy it. *R. v. Scudder*, 3 C. & P. 605. *Ry. & M. C. C.* 216. *S. C.*

Woman not with child.

Accessories.

It seems, that where a woman being with child, has a drug given her by another person, to take for the purpose of procuring a miscarriage, and which she takes accordingly; she is either guilty as principal, or as accessory before the fact, under 9 G. 4. c. 31. s. 13. *Rex v. Henry Russell, R. & M. C. C. 356.*

Accessories.

Principals in the second degree, and accessories before the fact, made punishable with death, under 7 & 8 G. 4. c. 29. are now only liable to be transported for life, or not less than seven years, with or without previous imprisonment, and with or without hard labour, for any term not exceeding four years—or to be imprisoned with or without hard labour for any term not exceeding four years, nor less than one year. 3 & 4 W. 4. c. 44. And see *Capital Punishment, post.*

I. Principals in the second Degree, Page 9.

Constructive presence.

Circumstances which amount to a constructive presence at common law, are not sufficient for the same purpose upon an indictment under a statute. *R. v. Davis and another. R. & R. C. C 113. R. v. Brady and others, 1 Stark. Crim. Pl. 2d. ed. n. (a) p. 84. and see 1 Russ. C. & M. 22.*

II. Accessory before the Fact, Page 12. § 17.

Communication with principal need not be direct.

With respect to an accessory before the fact, it is not necessary that there should be any direct communication between the accessory and the principal. It is enough if the accessory direct any intermediate agent to procure another to commit the felony; and it will be sufficient, even though the accessory does not name the person to be procured, but merely directs the agent to employ some person. *R. v. Cooper & Wicks, 5 C. & P. 535. J. Parke, J.*

Statute only extends to persons who were previously triable.

By the 7 G. 4. c. 64. s. 9. it is enacted, "That if any person shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law, or by virtue of any statute or statutes, made or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished." It has been held, that this statute extends to those persons only, who before the statute, were triable either with or after the principal, and not to make those triable who before that, never could have been tried. *R. v. Henry Russell. R. & M. C. C. 356.* In this case the prisoner gave a girl who was with child by him some arsenic to take, for the pur-

Admiralty.

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pose of procuring abortion. The girl took it the next day (in the absence of the prisoner) and it caused her death. It was held, that the girl was *felo-de-se*—that the prisoner was an accessory before the fact, and that he could not be tried under 7 G. 4. c. 64. s. 9.

III. Accessory, Page 14.

See *R. v. John Blick*, 4 C. & P. 377. and *R. v. John Turner*, R. & M. C. C. 347. stated post, Evidence I.

Adjournment.

Page 20.

An adjournment of the court of Quarter Sessions must be by two justices at least, and if the justices do not assemble and adjourn, the session is lapsed, and that notwithstanding the crier of the court (in the absence of the justices) makes the usual proclamations upon the opening and adjournment of the court.

Quarter sessions.

The re-assembling of the court without an adjournment, or after a void adjournment, is without any authority: and whatever is then done, is *coram non judice* or *non judicibus*, and a nullity.

The adjournment of the court must appear on the record; it is not sufficient to state that the court re-assembled on a particular day after the commencement of the sessions. See 6 C. & P. 90. and *R. v. Bowman*, 6 C. & P. 337. O.B.S.

Admiralty.

Page 21.

By 2 & 3 W. 4. c. 40. s. 33, it is enacted, "That the petition for probate of will or letters of administration of the effects of any deceased petty officer or seaman, or non-commissioned officer of marines or marine, or for obtaining a check or certificate, in lieu of probate or letters of administration, in cases of claims where the deceased's assets shall not exceed thirty-two pounds and twenty pounds respectively, shall be addressed to the inspector of seamen's wills, and shall be forwarded to the secretary of the admiralty, and if any person shall subscribe, transmit, utter, or publish any false petition or application to the said inspector, knowing the same to be false, in order to obtain or to enable any other person to obtain, any check or certificate, in lieu of probate or letters of administration as aforesaid, every person so offending shall be deemed guilty of felony, and being convicted, shall be liable to be transported for not exceeding fourteen years, nor less than seven years, or to be imprisoned for any term not exceeding three years, nor less than one year."

False petition for probate, &c.

Affidavit.

Page 25.

Insolvent's
schedule.

The form of oath at the end of an insolvent debtor's schedule is an affidavit in writing, and may be so described in an indictment for perjury. *R. v. Moody*. 5 C. & P. 23. *Lord Tenterden, C. J.*

Before a com-
missioner.

An affidavit sworn before a commissioner for taking affidavits, is admissible in evidence, without producing the commission by virtue of which the commissioner acted, proof of the commissioner having acted as such is sufficient. *R. v. Howard*. *Mo. & Rob.* 187. *Patteson, J.*

Traverse at the
assizes.

§. 8.—After the trial of a *traverse* on the crown side of the assizes, affidavits are never put in. Trials at the assizes upon indictments removed by *certiorari* are since the statute 11 G. 4. & 1 W. 4. c. 70. s. 9. in the same situation in that respect. *R. v. Cox and others*, 4 C. & P. 538. *Patteson, J.* But *semble* affidavits would be received under very special circumstances. *Id.*

Amendment of
sentence passed
at the assizes.

Affidavits merely in mitigation of punishment, are not sufficient to obtain an amendment of a sentence passed at the assizes under the 11 G. 4. & 1 W. 4. c. 70. s. 9.; the party must point out some essential defect in the sentence. *R. v. Lloyd and others*, 4 B. & Ad. 135.

Affirmation.

See Oath.

Al-houses.

See Beer.

Anatomy.

The state of the law on this important subject has been much improved by the 2 & 3 W. 4. c. 75. intituled, "*An Act for regulating Schools of Anatomy.*"

This however is a case in which the enactments of the legislature cannot effect a great deal, and until the dissemination of knowledge has removed, or at all events weakened the prejudices of the people of this country on this subject, the anatomist will continue to experience difficulties in procuring subjects for dissection, and without dissection it is in vain for him to hope for the requisite knowledge of his art.

To those who are in the constant habit of attending courts of criminal justice, the necessity of every *medical* man at least having

a competent knowledge of this subject, is sufficiently apparent. How frequently do we see cases which entirely fail on account of the utter insufficiency of *post mortem* examinations, or the incompetency of the persons who have conducted them.

The College of Surgeons and the Society of Apothecaries have lately exerted themselves most laudably and effectually with regard to the qualifications required of their members, and the extension of medical science, and we cannot but congratulate ourselves upon the many enlightened members these two societies are every year sending out to practice throughout the empire.

It is much to be regretted that the law does not hold out sufficient encouragement to the profession, in the remuneration it allows for the performance of *post mortem* examinations. *The risk is great*, and the trouble very considerable, and in order to insure a proper performance of the operation *by a skilful practitioner*, a liberal fee ought to be allowed.

It is very desirable that a discretionary power should be vested in the judge at the assizes to allow such a sum as he may think fit, for fees and expenses to professional and scientific persons, who have been employed in getting up the evidence in criminal prosecutions.

By the 2 & 3 W. 4. c. 75. s. 1. the Secretary of State for the Home Department in Great Britain, and the Chief Secretary in Ireland, are authorised to grant licenses to practice anatomy to any fellow or member of any college of physicians or surgeons, any graduate or licentiate in medicine, any person lawfully qualified to practice medicine, any professor or teacher of anatomy, medicine, or surgery, or any student attending any school of anatomy, upon application from such party, countersigned by two justices for the place where such party resides, that to their knowledge or belief such party is about to practice anatomy.

Licenses to be granted.

By s. 2. Not fewer than three persons are to be appointed, to be inspectors of places where anatomy is carried on.

Inspectors to be appointed.

By s. 3. The Secretary of State, or Chief Secretary are to direct what district every such inspector shall superintend, and in what manner he shall transact the duties of his office.

Duties.

By s. 4. Inspectors are to make quarterly returns of bodies removed for anatomical examination, distinguishing the name, sex, and age.

s. 5. The inspector may visit and inspect, at any time, any place, notice of which has been given, that it is intended there to practice anatomy.

s. 6. Salaries to inspectors not to exceed 100*l.* per annum, besides expenses, and to be payable quarterly.

Salary.

s. 7. Any person having the lawful possession of a body, except an undertaker, or person intrusted with it for interment, may permit it to undergo anatomical examination, unless the deceased have expressed a desire to the contrary, or any relative shall require it to be interred without such examination.

Persons having possession of bodies may permit anatomical examination.

s. 8. If any person in writing, at any time during his life, or verbally in the presence of two witnesses, during the illness whereof he died,

Persons may direct the ana-

tomical examination of their bodies after death.

Notice of the removal of a body to be given, and a certificate sent with it.

Licensed persons may receive bodies and examine them.

Certificate to be sent to the inspector.

Notice of practising anatomy at any place.

Bodies to be removed in a coffin.

Licensed persons not liable to prosecution.

Act not to be construed to prohibit *post mortem* examinations.

Limitation of actions.

Offending against the act a misdemeanour.

Interpretation.

shall direct his body to be examined anatomically, or shall nominate any (authorised) person to make such examination, then the party having the lawful possession of the body shall direct or permit such examination of the body, unless the surviving husband or wife, or nearest relative require it to be interred without such examination.

s. 9. No body shall be removed until 48 hours after death, nor until after 24 hours' notice to the inspector of the district; or if there be no such inspector, to some physician, surgeon, or apothecary residing near the place of death; nor unless a certificate, stating the manner of death, shall, previously to the removal, have been signed by the physician, &c. who attended such person during the illness whereof he died; or, if no medical man attended such person, then by some physician, &c. called in after death to view the body, who shall state the manner of death, according to the best of his belief, but shall not be concerned in examining the body. The certificate to be delivered, together with the body, to the party receiving it for anatomical examination.

s. 10. Any person having a license may receive any body, and examine it anatomically, provided a certificate have been delivered with the body.

s. 11. Every person receiving a body shall demand a certificate, and within 24 hours afterwards shall transmit to the inspector, or to some physician, &c. such certificate, and also a return stating the day and hour, and from whom the body was received, the date and place of death, and as far as known, the sex, name, age, and last place of abode of the deceased, and shall also enter those particulars, and a copy of the certificate, in a book to be kept by him for that purpose, and shall produce such book to the inspector whenever required.

s. 12. No person to practice anatomy at any place, unless the owner or occupier, or some party authorised to examine bodies anatomically, shall give one week's previous notice to the Secretary of State, of the place where it is intended to practice anatomy.

s. 13. Bodies are to be removed in a coffin or shell, and after undergoing examination shall be interred in some public burial-ground, and a certificate of interment sent to the inspector.

s. 14. No licensed person shall be liable to any prosecution, &c. for receiving or having any dead body, according to the provisions of the act.

s. 15. The act shall not be construed to prohibit any *post mortem* examination, made by competent legal authority.

s. 16. Bodies of murderers not to be dissected. (See *post*, *Murder*.)

s. 17. Actions to be brought within six months, and defendant may plead general issue, &c.

s. 18. "Any person offending against the provisions of this act, in England or Ireland, shall be deemed and taken to be guilty of a misdemeanour; and being duly convicted thereof, shall be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding fifty pounds, at the discretion of the Court before which he shall be tried."

s. 19. Interpretation clause. The words "person" or "party" to include any number of persons, or society by charter or otherwise,

and the meaning not to be restricted by being subsequently referred to in the singular number and masculine gender.

20. Commencement of act, 1st of August, 1832.

Appeal.

Page 38.

§. 3.—A notice of appeal against a conviction of a person under 5 *G. 4. c. 83. s. 4.* as a rogue and vagabond, and for an indecent exposure of his person; stating as the ground of appeal, that the appellant was not guilty, is sufficient. *R. v. Js. of Newcastle-upon-Tyne*, 1 *B. & Ad.* 933. Notice.

Page 39. §. 6.—Where a statute (as the pilot act 52 *G. 3. c. 39.*) gives a party a right of appeal within three calendar months, he need not appeal to the *next* immediate sessions; but may within three months give notice of appeal to the then following sessions, though these are held after the expiration of the three months. *R. v. Justices of Middlesex*, 6 *M. & S.* 279. And when an order of magistrates is served on a party too late to enable him to try an appeal from it at the next sessions, he need not *enter and respite* the appeal at those sessions, but may pass them by, and give notice for, and enter and try his appeal at, the following sessions. *R. v. Justices of Southampton*, 6 *M. & S.* 394. To what sessions.

It is not necessary in a notice of appeal against a county rate to specify the grounds of appeal; but if the appellant states in his notice as causes of appeal things which are not so, and the sessions think the respondents have been misled by the terms of the notice, they ought in that case to adjourn the appeal; otherwise, they are bound to hear it. *R. v. Justices of Westmoreland*, 10 *B. & C.* 226. Notice.

Where a case (upon an appeal) reserved, by the sessions, for the opinion of the Court of King's Bench, is sent back to be restated, it is like a new trial, and the case must be re-heard and the sessions may receive further evidence, and make a new order upon such rehearing. *R. v. Bloxam*, 1 *A. & E.* 386. Restating a case.

Apprentices.

Page 40.

See stat. 3 & 4 *W. 4. c. 53.* as to the allowance of indentures of parish apprentices by two justices, and the execution of the indentures of poor children by corporations.

By stat. 4 & 5 *W. 4. c. 35.* the act of 28 *G. 3. c. 48.* for the "regulation of chimney sweepers and their apprentices," has been repealed and many salutary regulations introduced respecting chimney sweepers, their apprentices, and the construction of chimney flues. Chimney sweepers.

No child under 10 years of age is to be apprenticed to a chimney

Army.

sweeper, and indentures of children under that age, executed after the passing of this act, are to be void; *sections 2 and 4.*

No person is to act as a chimney sweeper, or take apprentices, &c., unless he is a rated inhabitant; *section 3.*

Apprentices under 14 years of age are to be designated by a brass plate, (*section 6.*) and no chimney sweeper is to employ any child under 14 years of age, who is not an apprentice; *section 7.*

Children are to be bound in the form given by the act, with the consent of justices; *sections 9 and 10.* Boys are not to be bound until after they have had a trial, and the justices upon examination find them willing; *sections 12, 13, and 14.*

Chimney sweepers and their apprentices are not to call or hawk the streets; *section 15.*

Justices to determine complaints; *sections 16 and 17.*

A penalty of 100*l.* is imposed for constructing chimneys or flues contrary to the regulation of the act; *section 18.*

By *section 24.*, an appeal to the Quarter Sessions is given.

By *section 8.*, it is enacted, that any person or persons requiring or compelling any apprentice, or person of any description, to ascend a chimney flue for the purpose of extinguishing fire therein, shall be held and adjudged to be guilty of a misdemeanor, and be liable to be proceeded against accordingly.

And by *section 26.*, the act is to continue in force until the 1st of January, 1840, and until the end of the then next session of parliament.

Army.

**Punishment for
personation,
forgery, &c.**

By 2 & 3 *W. 4. c. 53. s. 49.* "If any person shall knowingly and willingly personate or falsely assume the name or character, or procure any other person to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served or be supposed to have served in His Majesty's army or in any other military service, or shall personate or falsely assume, or act, aid, or assist in personating or falsely assuming the name or character, or procure any other person to personate or falsely assume the name or character of the executor or administrator, wife, widow, next of kin, relation, or creditor of any such officer, non-commissioned officer, soldier, or other person as aforesaid, in order to receive or to enable any other person to receive any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any such officer, non-commissioned officer, soldier, or other person as aforesaid; or if any person shall forge or counterfeit or alter, or cause or procure to be forged or counterfeited or altered, or knowingly and willingly act or aid or assist in forging or counterfeiting or altering

the name or handwriting of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served or be supposed to have served in His Majesty's army, or other military service, or the name or handwriting of any officer or under officer, clerk, or servant of or in the employ of the commissioners of the said royal hospital at *Chelsea*, or the name or handwriting of any officer or person in any way concerned in the paying, or the ordering, directing, or causing the payment of any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid; or shall falsely make, forge, counterfeit, or alter, or willingly act, aid, or assist in the false making, forging, counterfeiting, procuring, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, relating to or in anywise concerning the payment of or the obtaining or claiming any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, in order to receive, obtain, or claim any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, or shall utter or publish as true, or knowingly and willingly act or aid or assist in uttering or publishing as true any falsely made or forged or counterfeited or altered letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, with intention to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim from the said commissioners of the said royal hospital, or from any officer, under officer, clerk, or servant of the said commissioners, or from any person whatsoever authorized or supposed to be authorized to pay the same, the payment of any such prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; or shall knowingly take a false oath in order to obtain letters of administration or the probate of any will, in order to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account or in respect of the service of any officer, non-commissioned officer, soldier, or other person as aforesaid, who shall have really served or be supposed to have served in His Majesty's army or other military service, or shall demand or receive any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable as aforesaid, upon letters of administration or a probate of a will, knowing the will on which such probate shall have been obtained to be false, forged, or counterfeited, or knowing such letters of administration or the probate of such will as last aforesaid to have been obtained by means of any such false oath, with intention to de-

Arrest.

fraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever; he shall be guilty of felony, and transported for life, or any term not less than seven years.

Arraignment.

Page 43.

In *R. v. Brittain* at the O. B. S. the prisoner, who had been previously tried upon an invalid indictment, upon his arraignment said, "I will not plead. I have pleaded once before, and I have stood my trial." The court ordered a plea of not guilty to be recorded under 7 & 8 Geo. 4. c. 28. s. 2. 6 C. & P. 92.

Arrest.

Page 45.

Warrant
granted upon a
certificate.

Upon a certificate by a clerk of the peace, that an indictment for a misdemeanor has been found against a party, a justice of the peace may grant a warrant to apprehend the defendant. *R. v. Stokes*, 5 C. & P. 148. *Park, J. and Patteson, J.*

It is also the practice for a judge to grant a warrant upon a certificate of the clerk of assize. *Id.*

I. By Warrant. Page 45.

Omission of
Christian name
in a warrant.

If a warrant for the apprehension of a person omit his christian name it should assign some reason for the omission, and also *give some distinguishing particulars of him*, otherwise it will be too general and unspecific; and resisting an arrest thereon and killing the officer attempting to make the arrest, will not be murder. *R. v. George Hood*, R. & M. C. C. 281. And see *post*, *tit. Maiming, Manslaughter, and Murder*.

II. Without Warrant. Page 47.

For a misde-
meanor.

Suspicion that a party has on a former occasion committed a misdemeanor, is no justification for giving him in charge to a constable, without a justice's warrant, and there is no distinction in this respect between one kind of misdemeanor and another. *Fox v. Gaunt*, 3 B. & Ad. 798.

In a case of stabbing, it appeared that the prisoner went to a house at night, demanding to see the servant. He was desired to depart, but refused. A constable was then sent for, and the prisoner left the house and went into the garden. When the constable arrived the prisoner said, that if a light appeared at the windows he would break them, upon which the constable took him into custody and he wounded the constable. It was held that the detention of the prisoner by the prosecutor (the constable) was illegal, and that if death had en-

sued from the prisoner's resistance, it would not have been murder, but manslaughter only. *R. v. George Bright*, 4 C. & P. 387. *J. Parke, J.*

But if a constable have a charge against a man for felony, and the man knows him to be an officer, the officer may arrest the man without any warrant, and without notifying to him that he has a charge against him. And if the man kills the constable when he is attempting to arrest him, he will be guilty of murder, although he had in fact not committed a felony. *R. v. Woolmer & Palmer*, R. & M. C. C. 334. For a felony,

See *post*, tit. Constable, Maiming, Manslaughter, and Murder.

Arson.

I.—Page 54.

Page 54. § 3.—In the case of *R. v. Ellison & Vines*, it was decided by seven judges against six, that an open building without doors or windows in a field at a distance from and out of sight of the owner's house, though part of it was boarded off and locked up, is not an out-house within the meaning of 7 & 8 G. 4. c. 30. s. 2. *R. & M. C. C. 336.* Out-house.

A building not near to the prosecutor's dwelling-house, and which was used as a cow-house, is neither a stable nor an out-house within the meaning of 7 & 8 G. 4. c. 30. s. 2. *R. v. Haughton*, 5 C. & P. 555. *Taunton, J.*

Nor is a cart hovel consisting of a stubble roof supported by up-rights in a field at a distance from other buildings. *R. v. Parrott*, 6 C. & P. 402. *Vaughan, B.*

Page 54. § 5.—Setting fire to a small quantity of straw and about a score of faggots in a temporary loft over an archway between two houses, is neither setting fire to a stack of straw or wood within the stat. 7 & 8 G. 4. c. 30. *R. v. Aris*, 6 C. & P. 348. *Park, J.* Stack.

Page 56. § 22.—A building intended for and constructed as a dwelling-house, but which had never been completed or inhabited and in which the owner had merely deposited straw and agricultural implements, was held not to be a house, out-house or barn, within the 9 G. 1. c. 22. *Elsmore v. St. Briavals*, 8 B. & C. 461. Description of building.

II. Indictment. Page 57.

The indictment must lay the offence to have been committed feloniously, unlawfully, and maliciously in the words of the stat. and the omission of the word unlawfully has been held fatal. *R. v. Turner*, R. & M. C. C. 239. Words of the statute.

On an indictment for setting fire to a stack of pulse, a mistake as to the name of the place where the offence was committed is immaterial, and that although there was no such place in the county, the offence is transitory, not local. *R. v. Joseph Woodward*, R. & M. C. C. 323. Venue.

The judges will take judicial notice that beans are a species of pulse, and it is therefore sufficient in an indictment for burning a Beans a species of pulse.

Assault.

stack of beans, to allege that the prisoner set fire to a stack of beans. *Id.*

Barley. Barley is corn or grain within the meaning of 7 & 8 G. 4. c. 30. s. 17. and in an indictment for arson, it is sufficient to describe it as a stack of barley. *R. v. Swatkins and others*, 4 C. & P. 548. *Patteson, J., and Bosanquet, J.*

House. Page 57. § 5.—A house may be described as in the possession of the actual occupier, though his possession be wrongful. *R. v. Margaret Wallis, R. & M. C. C.* 344.

Artificers.

Page 61.

See the act of 1 & 2 W. 4. c. 37, for prohibiting the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm.

Assault.

Page 63.

Imprisonment. (2) § 1.—A magistrate will be guilty of an assault if he detain a well-known person to answer a charge of misdemeanor, verbally intimated to him, but without a regular information. *R. v. Birnie, Knt. and others, M. & Rob.* 160. *Lord Tenterden, C. J.*

Page 66. § 9.—By 5 & 6 W. 4. c. 19. s. 38. reciting the 9 G. 4. c. 31. s. 27. it is enacted, that in case of any assault or battery which shall, after the commencement of the act, be committed on board of any merchant ship belonging to any subject of the United Kingdom, in any place at sea, or out of his Majesty's dominions, it shall be lawful for any two justices of the peace, in any part of his majesty's dominions, upon complaint of the party aggrieved, to hear and determine any such complaint, and to proceed and make such adjudication thereon, as by the said act (9 G. 4. c. 31.) any two justices are empowered to do, subject however to such provisos and limitations, as are contained in the said act with respect to the cases of assault and battery therein mentioned; and the fine or forfeiture imposed in any such case, shall be payable to the merchant seaman's hospital or institution, at or nearest to the port or place where such adjudication shall be made.

Writ of assistance. Page 71. § 8.—A writ of assistance will not justify officers in entering and searching houses for smuggled goods under 6 G. 4. c. 8. without probable cause. *R. v. Watts and another*, 1 B. & Ad. 166.

Assizes.

Page 73.

The judges of the Courts of King's Bench and Common Pleas, are judges of assize for the county of Middlesex. *R. v. Js. of Middlesex*, 3 B. & Ad. 100.

Page 76. § 11.—The justices of gaol delivery have no jurisdiction with respect to prisoners under sentence. *R. v. Palmer*, 6 C. & P. 122. O. B. S.

By 3 & 4 W. 4. c. 71. s. 2. The king in council is empowered to direct at what places, in any county in *England* and *Wales*, assizes shall be held—to order them to be held at more than one place in the county on the same circuit, and to order special commissions of oyer and terminer, and gaol delivery, to be held at more than one place in a county.

By section 3. The king in council may divide any county for the purposes of that act, and may make rules and regulations respecting the *venue*, attendance of jurors, the use of any house of correction or prison, as a common gaol, alteration of commissions, writs, &c. &c. and all such rules and regulations shall have the force of an act of Parliament.

By section 4. The king in council may order the Court of Common Pleas at Lancaster, to be held at one or more places in the county, and may make regulations respecting *venue*, attendance of jurors, &c. &c.

Attempts and Endeavours.

Page 85.

An attempt to commit a misdemeanor is a misdemeanor. *R. v. Robert Harris*, 6 C. & P. 129. *Tindal, C. J.*

“An attempt to commit a misdemeanor created by statute, is a misdemeanor itself. I recollect where a man had gone to an engraver to get him to engrave a plate to forge foreign bills of exchange. At that time it was only a misdemeanor to engrave such plates. I drew the indictment against him for soliciting the engraver to engrave the plate, and the prisoner was tried and convicted.” *Per Patteson, J. in R. v. Butler*, 6 C. & P. 368.

In indictments for attempts to commit offences, the offences attempted to be committed must be correctly described, as in an indictment for committing the offence itself. Thus in an indictment for an attempt to assault and have carnal knowledge of a girl between the ages of ten and twelve years (an offence against 9 G. 4. c. 31. s. 17.) it was held, that the indictment was bad, for not alleging that the girl was between the ages of ten and twelve years. *Id.* Indictment.

Autrefois acquit.

Insufficiency of indictment.

Page 91. § 14.—See *R. v. Turner & Reader, R. & M. C. C. 239*, where the judges holding that an indictment was bad, for not containing the word “unlawfully,” the prisoners were tried upon another indictment at the succeeding assizes, convicted and executed.

And see *R. v. Woolford & Lewis, Mo. & Rob. 384. S. P.*

Identity of the offence in fact.

Page 94. § 14.—*Thomas Welsh* was indicted for larceny at the *Southwark* borough sessions. It turned out that the larceny was, in fact, committed in *London* (within twenty yards of the boundary between *L.* and *S.*) and he was acquitted by direction of the judge. The prisoner being afterwards indicted for the same offence in *London*, he pleaded *autrefois acquit* in *Surrey*. The judges, however, held the plea bad, and that 7 *G. 4. c. 64. s. 12.* does not apply to trials in limited jurisdictions, but in counties only. *R. v. T. Welsh, R. & M. C. C. 175.*

Plea must not contradict the record.

Page 96. § 27.—An indictment charged, that the defendant on such a day in the second year of the reign of the *present king* kept a gaming house. Plea, that on such a day in the fourth year of the reign of the present king the defendant was arraigned upon an indictment, which charged that the defendant on the 18th January, in the fifty-seventh year of the reign of the *late king*, and on divers other days and times between that day and the day of taking the inquisition, kept a gaming-house, to the nuisance of the subjects of our said lord the king. The plea then averred the identity of the offence described in the two indictments, and the acquittal of the defendant. Upon demurrer to this plea, concluding with a prayer of judgment of *respondeas ouster*, it was held, that the plea was bad; because the indictment upon which the acquittal was alleged to have taken place, on the face of it, charged an offence committed in the reign of the *late king*; and it was not competent to the defendant to shew by averment, that it was for the same offence as that charged in the indictment before the court; for that would be in effect to contradict the record. It was also held, that the crown was entitled to final judgment, notwithstanding the form in which the demurrer concluded. *R. v. Taylor, 3 B. & C. 502.*

Final judgment.

Autrefois convict.

Page 99.

The Court will not reject the plea of *autrefois convict*, handed in by a prisoner, on account of informality; but will assign counsel to put it in a formal shape. *R. v. Chamberlain, O. B. S. 6 C. & P. 93.*

The plea must be on parchment, and signed by counsel. *Id.* See also *R. v. Bowman, O. B. S. 6 C. & P. 337.*

Only proved by the record.

The plea of *autrefois convict* can only be proved by the record.

The indictment, with the finding of the jury, &c. indorsed upon it, is not sufficient, although it appears that no record has been made up. *R. v. Bowman*, *O. B. S.* 6 *C. & P.* 101; and see also, *R. v. Smith and others*, 10 *B. & C.* 341. *S. P.*

But the Court will postpone the trial to give time for an application to the Court of King's Bench, for a *mandamus* to compel the making up of the record. *Id.*

Postponement of trial.

A prisoner pleaded this plea, to which the counsel for the crown replied *nul tiel record*. In proof of the plea, the record of a former conviction at the Clerkenwell Sessions was produced. But it did not appear by the record, that the Court had been regularly continued, by adjournments, to the day upon which the conviction took place; and it was held that the proceedings were *coram non judice*, and a nullity; and that therefore the plea was not proved. *R. v. Bowman*, *O. B. S.* 6 *C. & P.* 337. See *ante*, Adjournment, in Supplement, p. 1487.

Former conviction void as *coram non judice*.

Upon an objection taken to an indictment for larceny after verdict, that the word "of" was not inserted between the description of the property stolen and the name of the prosecutor, Alderson, B. said, that in consequence of the omission, the indictment did not describe any offence known to the law; but that the justice of the country was not to be trifled with, by allowing offenders to escape on account of such trifling mistakes; that no judgment had been passed, and the verdict could not be pleaded to another indictment; and the Learned Baron directed another indictment to be preferred, which, having been found, the prisoner was tried and convicted. *R. v. Joseph Lambert*, *Northumberland Spring Assizes*, 1835. *MS.*

Insufficiency of indictment.

Bail.

Page 100.

By 5 & 6 *W. 4. c. 33. s. 3.* reciting 7 *Geo. 4. c. 64*, it is enacted, "That it shall be lawful for any two justices of the peace, if they shall think fit, of whom one or other shall have signed the warrant of commitment, to admit any person or persons charged with felony, or against whom any warrant of commitment for felony is signed, to bail, in the manner and according to the provisions directed by the said recited act, in such sum or sums of money, and with such surety or sureties as they shall think fit, and notwithstanding such person or persons shall have confessed the matter laid to his or their charge, or notwithstanding such justices shall not think that such charge is groundless, or shall think that the circumstances are such as to raise a presumption of guilt."

Justices may admit parties to bail in all cases of felony.

By 10 *G. 4. c. 44.* for improving the police in and near the metropolis, it is enacted by section 9, that where any person charged with a petty misdemeanor shall be brought, without the warrant of a magistrate, into the custody of any constable appointed under that act, during his attendance in the night-time at any watch-house within the metropolitan police district; the constable may take bail by recognizance, without any fee or reward from such

Police constables may take bail in the night in case of misdemeanor.

person, conditioned to appear the next morning before a justice of the peace at some place specified in the recognizance. And see further, *Watch-house*, p. 1368. And 5 & 6 W. 4. c. 76. s. 79. contains a similar enactment with respect to constables of boroughs. See *tit. Constable*, *post*.

Notice of bail
in the Central
Criminal Court.

Page 110. § 9.—Upon an indictment for a misdemeanor, found in the Central Criminal Court, against a defendant (not in custody), forty-eight hours notice of bail must be given, unless the warrant is granted on a Friday, and there is reason to think that the object is to keep the party in custody over Sunday. *R. v. Carlile*, C. C. C. 6 C. & P. 628.

IV.—Page 112.

Prisoner need
not plead before
being admitted
to bail to tra-
verse.

If a prisoner be admitted to bail at the assizes, to appear and take his trial at the next assizes, he need not plead to the indictment before he is admitted to bail; but in such case he must enter into recognizance to appear, *plead*, and take his trial. The prosecutor and witnesses must enter into recognizances before the prisoner is bailed. *R. v. Jos. Lee*, for an assault, with intent to commit a felony; *York Assizes*, March, 1834. *Alderson, J., MS.*

Semble, the usual amounts for which the recognizances are taken in such a case are, the prosecutor, 40*l.*; witnesses, each, 20*l.*; the prisoner, 100*l.*; two sureties, each, 50*l.* *Id.*

Bankrupt.

Page 120.

Court of Bank-
ruptcy.

By 1 & 2 W. 4. c. 56. and by letters patent, made in pursuance of that act, a Court of law and equity called "the Court of Bankruptcy," has been established. The Court consists of one chief and three other judges, before whom are held "a Court of Review," which has superintendence in all matters of bankruptcy, subject to an appeal to the Lord Chancellor.

Court of Re-
view.

Commissioners.

Six commissioners have also been appointed who, singly, perform the duties of a set of commissioners under the old law, except in certain cases, in which matters must be adjourned or referred to *Sub-division Courts* to be held before three commissioners:—And parties aggrieved by the decision of Sub-division Courts may appeal to the Court of Review.

Sub-division
Courts.

Fiats.

Fiats are now issued in the place of commissions, and are directed to the Court of Bankruptcy or to commissioners in the country.

Official as-
signees.

Official assignees have been appointed, and, under the act, one of them must, in every case, be an assignee, together with the assignee or assignees appointed by the creditors.

Various useful provisions are also made respecting appeals, proofs of debts, appointment of assignees, vesting of the bankrupt's estate in the assignees, taking evidence *vidé voce*, &c., &c.

This act has been amended by 2 and 3 W. 4. c. 114.; by 3 and 4 W. 4. c. 47., and by 5 and 6 W. 4. c. 29.

Indictment for
not surrender-
ing will not lie

Page 121. § 5.—Where a bankrupt was indicted for not surrendering to his commission, under the 6 G. 4. c. 16. s. 112., and it appeared, that he was in prison for debt at the time when he should have sur-

rendered,—though there was some suspicion that his detainer was collusive;—it was held by *Littledale J.*, that the indictment did not lie; and that he was not *bound* (under the 113th section of the above act) to apply to the Lord Chancellor to have the time for his surrender enlarged, nor to apply to the commissioners (under the 119th section) to be brought up to surrender, although he had the privilege of doing so, if he had chosen to avail himself of it; and that he was, moreover, not obliged to give notice of his imprisonment to the commissioners, as they had themselves the power to issue their warrant to bring him before them, and might by diligent search have discovered where he was. *R. v. Mitchell*, 4 C. & P. 251.

against bankrupt in prison.

Page 122. § 10.—An indictment ought not merely to allege the issuing of the commission of bankrupt and the adjudication, but also that there had been a trading, a petitioning creditors' debt, and that he became a bankrupt, and that even since the 6 G. 4. c. 16. s. 112. *R. v. E. O. Jones and others*, for a conspiracy to conceal and embezzle part of the bankrupt's personal estate; 4 B. & Ad. 345.

Allegations in an indictment.

Page 123. § 17.—The balance sheet of a bankrupt given in on oath by him under his commission is not admissible evidence against him to prove the petitioning creditor's debt. *R. v. Daniel Britton, M. & Rob.* 297. *Patteson, J. and Alderson, J.*

Evidence.

Bastard.

Page 132.

A prisoner (charged with murdering her infant bastard child) was proved to have said, previous to her delivery, that she had never told any one of her situation but the father of the child,—that he lived a long way in the country,—that his name was T. H., and that *he had lately got married*. This was held sufficient *prima facie* evidence to prove that the child was a bastard as alleged in the indictment. *R. v. Ann Poulton*, O. B. S. 5 C. & P. 329. *Littledale, J.*

Evidence.

Page 134. § 5.—Preparing child's clothes and sending for a surgeon is evidence to negative a charge of concealment. *R. v. Sarah Higley*, 4 C. & P. 366. *Park, J.*

Concealment.

By 4 & 5 W. 4. c. 76. s. 69. All Acts relating to the liability and punishment of putative fathers, and punishment of mothers of bastard children are repealed.

Repeal of acts.

By section 71. The mother of every illegitimate child shall maintain it until it attain the age of sixteen years.

Mother to maintain till 16 years old.

By section 72. Overseers may apply to the court of quarter sessions for an order upon the putative father of a bastard child to reimburse them for its support. The court is to hear evidence, and if satisfied that the person charged is the father, to make an order accordingly. But no order is to be made unless the mother's evidence shall be corroborated in *some material particular*; the order not to be for more than the expense incurred; and only to continue in force until the child attain the age of seven years; and no money paid by the father shall be paid to the mother nor applied to her support.

Quarter sessions may order father to reimburse overseers until child seven years old.

Sections 73, 74, 75, and 76. make provision for the mode of appli-

cation to the sessions, and the recovery of payments directed by the order of sessions; from the putative father, when in arrear.

Beer.

By 11 G. 4. & 1 W. 4. c. 51. Certain duties on *cyder*, and on *beer* and *ale* are repealed.

And by 11 G. 4. & 1 W. 4. c. 64. The general sale of *beer*, *ale*, and *cyder* is permitted, by any person obtaining an excise licence for that purpose under the provisions of the act, and for which an annual duty of 2l. 2s. is chargeable.

Selling without
a licence;

By section 7. If any person not duly licensed as the keeper of a common inn, ale-house, or victualling-house, who shall sell beer by retail, without having an excise retail licence, or after the expiration of such licence, or without renewing such licence in the manner directed by the act, or in any house or place not specified in the licence; or if any such person so licensed shall deal in or retail any wine or spirits; the offender for every such offence incurs a penalty of 20l., which (by sections 8. and 9.) may be recovered as any other penalty under the excise laws, one moiety to go to the King, and the other to the informer.

or not accord-
ing to standard
measures.

By section 12. The standard measures are to be used by every person licensed to sell beer, under a penalty not exceeding 40s. with costs, recoverable within thirty days after the commission of the offence before two justices.

Permitting
drunkenness or
disorderly con-
duct.

By section 13. Every seller of beer, who shall permit any person to be guilty of drunkenness or disorderly conduct in the house licensed, shall forfeit the sums following; and every person, who shall in any way transgress or neglect the conditions of such licence, shall be deemed guilty of disorderly conduct; and every person so licensed, who shall permit such disorderly conduct, shall for the first offence forfeit not less than 40s., nor more than 5l., as the justices shall adjudge; for the second offence, not less than 5l., nor more than 10l.; and for the third offence, not less than 20l., nor more than 50l.; and the offender may be also disqualified for selling beer for two years, and the house mentioned in his licence may be also prohibited from the sale of beer.

Selling adul-
terated beer.

By the same section, if any person so licensed shall knowingly sell any beer, ale, or porter, made otherwise than from malt and hops, or shall mix, or cause to be mixed, any drugs or other pernicious ingredients with any beer sold in his house, or shall fraudulently dilute, or in any way adulterate any such beer; the offender, for the first offence, forfeits not less than 10l., nor more than 20l.; and for the second offence, he shall be adjudged to be disqualified from selling beer for two years, or to forfeit not less than 20l., nor more than 50l.; and if during such term of two years he shall sell any beer, he incurs a forfeiture of not less than 25l., nor more than 50l. for every house or place where he shall commit such offence. And if any person shall at any time during any term, in which it shall not be lawful for beer to be sold on the premises of any offender, sell any beer thereon, knowing that it was not lawful; he incurs a penalty of

not less than 10*l.*, nor more than 20*l.*, as the convicting justices shall adjudge.

By *section 14*. No person licensed shall keep his house open, nor shall sell beer, nor suffer any to be drank or consumed in his house, before four in the morning, nor after ten in the evening; nor between ten and one, or three and five in the day, on Sundays, Good Friday, Christmas Day, or any day appointed for a public fast or thanksgiving; under the penalty of 40*s.* for every offence; and every separate sale shall be deemed a separate offence.

Selling at prohibited times.

By *section 15*. All penalties, except the penalty for selling beer without a licence, may be recovered before two justices in petty sessions, within three calendar months after the commission of the offence. And if, on any conviction, it shall be proved that the offender had been previously convicted within twelve calendar months of one such offence, he shall be adjudged to be guilty of a second offence; and if he shall be found to have been previously convicted within eighteen calendar months of two such separate offences, he shall be adjudged guilty of a third offence.

How penalties recovered.

By *section 16*. An appeal is given to the next quarter sessions, unless held within twelve days after the conviction, and in that case to the next subsequent sessions; on the party entering into a recognizance, with two sureties, to appear and abide the judgment of the Court. The sessions may adjudge the party to be guilty of any third offence against the act, as the case may be, and punish him by fine not exceeding 100*l.*, together with costs; or adjudge his licence to be forfeited; or that no beer shall be sold in his house for two years; or punish him by such fine as aforesaid, and also adjudge his premises to be disqualified for the sale of beer, and the licence to be forfeited.

Appeal.

By *section 17*. Whenever any appeal shall be dismissed, or the conviction be affirmed, or the appeal abandoned, the Court may order the appellant to pay to the justices who took the recognizance such sum, by way of costs, as the Court shall think sufficient to indemnify the justices from all charges to which they may have been put, in consequence of the intention of the party to appeal, and in default of payment, he may be committed until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid. And where the conviction shall be reversed, the Court may order the treasurer of the county to pay to the convicting justices such sum, as the Court may think fit, to indemnify them from all costs to which they may have been so put.

Costs.

By *section 18*. Where no fit person appears to prosecute the charge against a party appealing, the convicting justices may bind over the constable, or other peace officer of the parish or place where the offender's house shall be situate, to carry on all such proceedings; and the justices may order the county treasurer to pay to the constable, and the witnesses, such sums of money, as to the Court shall appear sufficient to reimburse them the expenses of the prosecution; which order the clerk of the peace is required to make out and deliver to the constable, or witnesses.

Constables may be bound over to prosecute.

By *section 19*. In default of payment of any penalty by the convicted party, proceedings may be had against his sureties, after one calendar month from the conviction, in a summary way before the

Sureties.

convicting justices; and the penalty may be levied on them by distress.

Witnesses.

By *section 20*. Witnesses summoned to give evidence before the justices, or the sessions, incur a penalty of 10*l.*, for neglecting to appear.

**Imprisonment
in default of
distress.**

By *section 21*. All penalties not paid within seven days after conviction may be levied by distress; in which case the offender, if in custody, shall be forthwith discharged. But in default of distress, the offender may be committed not exceeding one calendar month, if the penalty is not above 5*l.*; not exceeding three, if the penalty is above 5*l.*, and not more than 10*l.*; and not exceeding six, if the penalty is above 10*l.* But in any such case, if the offender shall pay to the gaoler the penalty imposed, and costs, together with the costs of his apprehension and of his conveyance to gaol, previous to the expiration of his commitment, he shall be forthwith discharged.

**Application of
penalties.**

By *section 22*. The convicting justices may, if they think fit, award not more than half of any penalty to the prosecutor, and the remainder to the treasurer of the county towards the county rate.

No certiorari.

By *section 25*. A general form of conviction is given, which (by *section 26*.) is not removable by *certiorari*; nor is any warrant of commitment to be void by reason of any defect therein, provided it be alleged that the party has been convicted, and that there is a valid conviction to sustain the same.

**Cyder and
perry.**

By *section 30*. Licences to retail *cyder* and *perry* may be also granted under the regulations of the act, on payment of a duty of 1*l.* 1*s.*; and all the provisions and penalties of the act with respect to the sale of beer, are declared to be applicable to the sale of cyder and perry. It is further provided, that any person licensed to sell beer may also sell cyder and perry, without a separate licence for that purpose; but not *vice versa*.

**Rules of con-
struction:**

By *section 32*. Various rules are given for the interpretation of the meaning of certain words occurring in the act; some of which, however, seem rather unnecessary for any person versed in the English language; while others are very fitly introduced, to meet some decided cases on the construction of former acts of parliament. And, indeed, to prevent the ends of justice from being so frequently defeated by absurd quibbles and objections, it were much to be wished, that these latter rules were applicable to the construction of every other statute.

By the 4 & 5 W. 4. c. 85. s. 1. The licence granted under 11 G. 4. & 1 W. 4. c. 64., shall not authorize the consumption of beer on the premises unless granted upon the certificate thereafter required.

**Certificate to be
deposited for
license for beer
to be drunk on
the premises.**

By *section 2*. Every person applying for a licence to sell beer to be drank on the premises, shall annually deposit with the commissioners of excise, collector, &c., a certificate of character signed by six inhabitants of the parish, &c.; overseers to certify (if the fact be so) that such persons are rated inhabitants.

By *section 3*. Overseers refusing to certify, to forfeit not exceeding 5*l.*

**Penalty for
evasion.**

By *section 4*. Permitting persons to carry beer out of the house or premises of a licensed person to be consumed in any other house,

&c. of such licensed person, with intent to evade the provisions of the act, to be deemed a consumption upon the licensed premises.

By *section 5*. The provisions of the mutiny act in respect of billeting soldiers, shall only extend to persons licensed to sell beer, &c. to be consumed on the premises.

By *section 6*. Justices at petty sessions shall annually between the 20th August, and 14th September, fix the hours at which licensed houses shall be opened and closed:—not earlier for opening than five o'clock in the morning, or before one o'clock in the afternoon on Sunday, Good Friday, Christmas Day, or any day appointed for a public fast or thanksgiving;—nor later for closing than eleven o'clock at night. Proviso that persons aggrieved may appeal to the quarter sessions.

Justices to fix hours for opening and closing.

By *section 7*. Constables and police officers are empowered to enter licensed houses as often as they shall think proper: and licensed persons refusing to admit them, are to forfeit for the first offence not exceeding 5*l.*, and for a second offence may be adjudged to be disqualified from selling beer, &c. for two years.

Constables empowered to enter houses.

By *section 8*. Persons making or using false or forged certificates, are to forfeit 20*l.*, and every licence granted to persons using such certificates shall be void.

Penalty for false certificate.

By *section 9*. No licence for sale of beer to be drunk on the premises shall be granted without a certificate.

By *section 10*. Licensed persons are to produce their licences when required by two justices, penalty for refusal not exceeding 5*l.*

By *section 11*. The powers, provisions, penalties, &c. contained in the 11 *G. 4.* & 1 *W. 4. c. 64.* to be applicable to persons licensed under this act.

Provisions of former, extended to this act.

By *section 12*. The 11 *G. 4.* & 1 *W. c. 64.* to continue in force except as thereby altered.

By *section 13*. The duties on licences are repealed (except so far as they relate to cyder and perry) and new duties are imposed,—upon a licence to sell beer, &c. to be drunk *off* the premises, 1*l.* 1*s.* —upon a licence to sell beer, &c. to be drunk *on* the premises, 3*l.* 3*s.*

New duties.

By *section 16*. Licences are not to authorize persons to hold wine or spirit licences; penalty for selling wine and spirits, &c. 20*l.*

Not to have spirit licences

By *section 17*. Unlicensed persons selling beer; to be drunk off the premises, to forfeit 10*l.*; to be drunk on the premises, 20*l.*

Penalties for selling without licence.

By *section 18*. The words “*not to be drunk on the premises,*” or “*to be drunk on the premises,*” are to be painted over the door of licensed premises.

Words to be painted over door.

By *section 19*. The selling beer, &c. in any less quantity than four gallons and a half, shall be deemed selling by retail.

What a retailing.

By *section 20*. Persons licensed to sell beer, &c. are to be liable to penalties for selling wine or spirits, without a licence.

Penalties for selling spirits.

By *section 21*. Certificates are not to be required for houses situated within *London* and *Westminster*, the bills of mortality, any city or town corporate, nor within one mile of the polling place of any town containing five thousand inhabitants, and returning any member to Parliament; but licences are not to be granted in such places after 5th April, 1836, unless houses or premises are of the value of 10*l.* per annum.

In cities, &c. certificates not to be required nor licences to houses under 10*l.* a year.

And by *section 22*. The service of any summons shall not be sufficient unless made by a constable, &c.

Bigamy.

Page 140.

Where a woman believed her first husband dead.

Eliza Greenwood, was indicted for bigamy at the *Liverpool* Summer assizes, 1835. The prisoner was married to *William Greenwood*, at *Manchester*, in April 1833, and her husband left her about Easter 1834. In November 1834, the prisoner was informed that her husband had been drowned in crossing the *Mersey*, and in consequence of such information, the prisoner and her sister went to *Liverpool* to make inquiries, which so far satisfied them, that they wore mourning for some time afterwards. In March 1835, the prisoner contracted a second marriage, and her first husband shortly afterwards made his appearance. *Tindal, C. J.* told to the jury in summing up, that if the prisoner was really deceived by the information given her, and at the time she contracted the second marriage, believed her first husband to be dead, she could not be guilty of this offence. For the offence being a felony, implies an evil intention, which the prisoner could not have if she believed her first husband to be dead. And the jury acquitted the prisoner. *R. v. Eliza Greenwood, MS.*

Indictment.

Page 143.—In an indictment for this offence, the second wife was described as *E. C. widow*.—*E. C.* was in fact not a widow, nor had she ever been represented or reputed to be so. Held a fatal variance, although it was not necessary to state more than the name of the party. *R. v. Wm. Deeley, 4 C. & P. 579. R. & M. C. C. 303, S. C.*

Marriage of minors.

Where a marriage by licence was solemnized between a man and woman, the former being a minor, whose father was living, and who did not consent to the marriage; it was held to be nevertheless a valid marriage, the 4 *G. 4. c. 76. s. 16.*, which requires such consent, being only directory. *R. v. Justices of Birmingham, 8 B. & C. 29.* So where the marriage of an infant by licence, was solemnized without the consent of parent or guardian, after the 22d July 1822, the day when the 3 *G. 4. c. 75.* received the royal assent, (by which the *eleventh section* of 26 *G. 2. c. 33.* was repealed), and the 1st September 1822, the day when *s. 8.* of the 3 *G. 4. c. 75.* respecting marriage licences began to operate, it was held to be a valid marriage. *R. v. Waully, Ry. & M. C. C. 163.*

Page 146. § 17. [The author has suggested in this place, under the above title, that when a false oath is taken by a party under age, for the purpose of procuring a marriage-licence, he might be prosecuted for perjury. This point was left in doubt by the cases of *R. v. Alexander, 1 Leach, 63.*, and *R. v. Woodman, Id. 64. note (a)*; but it has been lately decided, that a false oath taken before a surrogate, for this purpose, will not support a prosecution for perjury; though there are no satisfactory reasons stated for this decision. *R. v. Foster, R. & R. C. C. 459.* And see *ante*, p. 1001. § 9. See also *R. v. Verelst, 3 Camp. 433.* Such an offence, however, is clearly punishable as a misdemeanor, at common law; if the indictment alleges that the false oath was taken, with intent to procure the licence, and that the licence was by such means actually obtained. *R. v. Foster, supra. Note by Mr. Deacon.]*

Page 146. § 19.—In a case before *Mr. Baron Gurney*, where the second wife, whose name was *Brown*, when the banns were published, had assumed the name of *Thick*, by which she had never previously been known, in order that her neighbours might not know that she was the person intended, and was married by that name: it was objected on the part of the prisoner, that the second marriage ought to possess all the requisites of a valid marriage, except the ability to contract of the party who had a former husband or wife living. And this being a void marriage, the offence had not been committed.—*Gurney, B.* “That applies only to the first marriage, and I am of opinion that parties cannot be allowed to evade the punishment for the offence by contracting an invalid marriage.” *R. v. John Penson*, 5 C. & P. 412. See also *R. v. William Allison*, R. & R. C. C. 109. *R. v. J. H. Edwards*, R. & R. C. C. 283. Banns in assumed name.

Page 147. § 20.—In the publication of banns in 1817 a woman named *Mary Hodgkinson* was called *White*, a surname entered by mistake in the register of her baptism, but which she had never gone by, or been entitled to. The false name was given to the officiating clergyman, without any intention to mislead, nor did any individual having an interest in the marriage appear to have been deceived. It was held, nevertheless, that the marriage was void, under the provisions of the former marriage act, 26 G. 2. c. 33. s. 8. It might have been otherwise, if (without any fraudulent intent) there had been only a partial variation of the name, as the addition, or suppression merely of one Christian name; or if the name had been one, which the party had ever used, or been known by. *R. v. Tibshelf*, 1 B. & Ad. 190. Banns published in a false name.

Page 148. § 22.—On the indictment for bigamy, if the first marriage is in *Ireland*, it is no objection that it was by licence, when one of the parties was under age, and that there was no consent of parents; unless such marriage was avoided on that ground within a year, under the 9 G. 2. c. 11., the Irish marriage act, the marriage being voidable only and not void. *R. v. John Jacobs*, Ry. & M. C. C. 140. Marriage in Ireland.

Page 149. § 30.—The marriage of *Quakers* is solemnized by a public declaration of the parties, at a monthly meeting of the society, of their becoming man and wife, and by a certificate to that effect entered in a register, signed by the parties, and by several subscribing witnesses. *Dean v. Thomas*, 1 M. & M. 361. Quakers.

The marriage of *Jews* is by a written contract, which is afterwards solemnly ratified in the synagogue. *Semble*, that in order to prove such a marriage, it is not sufficient to prove by witnesses who were present the religious ceremony merely, but the written contract should also be produced, and the execution of it proved. *Horn v. Noel*, 1 Camp. 61. *Cor. Lord Ellenborough, C. J.* Jews.

Boundaries.

Vide 7 G. 4. c. 64. s. 12, 13. *Ante*, *Venus*, page 1356; and *R. v. T. Welsh*, R. & M. C. C. 175. Stated *ante*, *Autrefois acquit*, p. 1498.

Borough.

See Corporation.

Bridges.

II. What are Public Bridges.—Page 164.

Arches in a
causeway.

Public bridges are such as cross a stream of water, or water flowing in a channel between banks more or less defined, although such channel may be occasionally dry. Where the approach to a bridge was over meadows occasionally flooded *by a river*, by means of a causeway in which arches or culverts were placed at intervals for the passage of the flood water, *and more than three hundred feet from the bridge*, there being generally a strong current through the arches in Winter, and the arches were equally necessary for the safety of the bridge and of the causeway: It was held that these arches or culverts were not such public bridges, as the inhabitants of the country were bound to repair. *R. v. Inhabitants of Oxfordshire*, 1 B. & Ad. 289.

III. Who are bound to repair.

Roads over
bridges to be
repaired by
parishes, &c.

By the highway act 5 & 6 W. 4. c. 50. s. 21. it is enacted "that if any bridge *shall hereafter be built*, which bridge shall be liable by law to be repaired by and at the expense of any county, or part of any county, then and in such case *all highways leading to, passing over*, and next adjoining to such bridge shall be from time to time repaired by the *parish*, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge, bound to repair the said highways: provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways, and raised approaches to any such bridge, or the land-arches thereof."

And by *section 5.* of that act, the word "parish," includes township, &c. or any place or district maintaining its own highways.

Surveyors of
county bridges
to have the
same powers as
surveyors of
highways.

And by *section 2.* The several powers and authorities by the same act vested in the surveyors of highways for getting materials, preventing and removing nuisances and annoyances, are vested in the surveyors of county bridges, and the roads at the ends thereof, reparable therewith. And the several penalties, forfeitures, matters and things in the same act contained relating to highways, are thereby extended as far as the same are applicable to such bridges, and the roads at the ends thereof.

The act to commence from the 20th March, 1836.

If bridge useful
although not
necessary,
county liable.

Page 166. § 9.—Trustees under a turnpike act, having built a bridge across a stream where a culvert would have been sufficient, but a bridge was more beneficial to the public, the inhabitants of a

county cannot refuse to repair it on the ground that the bridge was not absolutely necessary. *R. v. Inhabitants, Lancashire*, 2 B. & Ad. 813.

Page 167. § 15.—Section 5. of the 43 G. 3. c. 59. only applies to a bridge newly erected, and not to a bridge merely widened or repaired subsequent to the passing of that act. *Id. R. v. Inhabitants of Devon*, 5 B. & Ad. 383. S. P. 43 Geo. 3. c. 59. s. 5. Bridge widened.

The trustees of a local turnpike act, are “individuals or private persons,” within the meaning of 43 G. 3. c. 59. s. 5.; and therefore a bridge erected by such trustees since that statute, and not under the direction or to the satisfaction of the county surveyor, is not such a bridge as the inhabitants of a county are bound to repair. *R. v. Inhabitants of Derby*, 3 B. & Ad. 147. Trustees of a turnpike road.

Page 168. § 17.—If a person is bound to repair a carriage bridge, *ratione tenuræ*, and a foot bridge be added to it, such person is not bound to repair the foot bridge, but the county is bound to do so if it have become useful to the public. *R. v. Inhabitants of Middlesex*, 3 B. & Ad. 201. Private person.

IV. Indictment, &c.

In an indictment against a *hundred* for not repairing a bridge, although the hundred may have been varied in its component parts, by statute within legal memory, it may nevertheless be charged as a hundred immemorially. *R. v. Oswestry*, 6 M. & S. 361. Against a hundred.

In case of a corporation, if it be alleged that the mayor, aldermen, and burgesses have from time immemorial repaired, and it should appear that there was a period when the corporation was not so constituted, this would be bad. In such a case, the proper way would be to allege that the corporation had immemorially repaired; and then, however constituted the corporate body may have been at different periods, the allegation would be sustained. *Id.* Against a corporation.

And see a form of indictment against such a corporation (*Kingstone upon Thames*) in a note to the S. C. *Id.* p. 365. n. (a).

Page 172. § 9.—A parish may be indicted for the non-repair of a bridge without stating any other ground of liability than immemorial usage. *R. v. Hendon*, 4 B. & Ad. 628. Against a parish.

Bullion.

Page 176.

Page 178. § 11.—The 8 & 9 W. 3. c. 26. is repealed by the 2 & 3 W. 4. c. 34.

See the 13 G. 3. c. 52. respecting *Sheffield* and *Birmingham*, plate.

A person who transposes the mark of the Goldsmith's company from one gold ring to another, is guilty of felony within the meaning of 38 G. 3. c. 69. s. 7. although the gold ring was of the standard value, and the transposition was made without any fraudulent intention. *R. v. James Ogden*, 6 C. & P. 631. *O. B. S. Bolland, B. and Park, J.*

Bullock-hunting.

See *post*, *Cattle*, II.

Burglary.

Page 180.

Cellar flap. For the punishment of principals in the second degree, and accessories before the fact. See *title*, *Accessories*, *ante*, p. 1486.

I. Breaking.

Page 181. § 4.—Lifting the flap of a cellar not fastened, and only kept down by its own weight, is a burglariously breaking. *R. v. George Russell*, *R. & M. C. C.* 377.

In a previous case it was decided that lifting up the trap-door of a cellar, which (*having been newly fixed*) *had no fastenings then belonging to it*, and was merely kept in its place by its own weight, was not a sufficient breaking to constitute burglary. *R. v. Lawrence and Weaver*, 4 *C. & P.* 231. *Bolland, B.*

Unlocking a door. Where a thief, after he had got into a dwelling-house, afterwards unlocked and opened the hall-door to make his escape, this was held to be a sufficient breaking out of the house. *Id.*

Window. Page 181. § 5.—Introducing the hand through a broken pane in a window, and unfastening and opening the window, is a sufficient breaking. *R. v. Robinson and Baccon*, *R. & M. C. C.* 327.

Page 181. § 7.—If the sash of a window be partly open, though not sufficiently so as to admit the person of a man, the raising it high enough for that purpose is not a *breaking* of the house. *R. v. Henry Smith*, *Ry. & M. C. C.* 178.

Hole in the roof. Page 181. § 8.—Entering a dwelling house through a hole in the roof, left for the purpose of light, is not a sufficient breaking. *R. v. Robinson, Spriggs, and Hancock*, *Mo. & Rob.* 357. *Bosanquet. J.*

II. Entering.

Page 184. § 11.—Throwing up a window, and introducing an instrument between such window and an inside shutter, in order to force open the shutter,—if the hand, or some part of it, is not within the window,—is not a sufficient *entry* to constitute burglary. *R. v. Rust and Ford*, *Ry. & M. C. C.* 183.

III. What is a Dwelling-house.

And see *post*, *Housebreaking* and *Larceny in a Dwelling-house*.

What building is part of a dwelling-house. Page 185. § 2.—In the case of *R. v. Francis Somervill*, for burglary, tried before *Mr. Justice Taunton* at *Newcastle*, *Spring assizes*, 1834, it was proved that the prisoners broke into an outer pantry and took a leg of mutton. There was an inner pantry under

the same roof as the prosecutor's dwelling-house, and communicating with it by a door. The outer pantry was not under the same roof as the dwelling-house, but was a building immediately adjoining the inner pantry at the back part of the house, and under a too full roof. There was a window between the two pantries which had one pane glazed, and the rest of it had laths nailed over it, but there was no other direct communication between them. There was a covered passage leading from the back door of the house to the door of the outer pantry, but the outer end of the passage had no door to it. The learned judge held that the outer pantry was no part of the prosecutor's dwelling-house, within the meaning of 7 & 8 G. 4. c. 29. *R. v. Francis Somervill and others, MS.*

Page 186. § 7. — A bed-room over a stable, which is a separate building from, and having no direct communication with the prosecutor's dwelling-house, although in the same yard, is not part of the dwelling-house. *R. v. Elizabeth Turner, 6 C. & P. 407. Vaughan, B.*

Bed-room over a stable.

Page 186. § 9.—It has been determined by seven judges (five being of a contrary opinion) that a room in a dwelling-house, occupied therewith, and under the same roof, for the purpose of burglary must be deemed part of the dwelling-house, although it has a separate outer door and no internal communication with the rest of the house. *R. v. John Burrowes, R. & M. C. C. 274.*

Room with separate outer door.

Where the prisoners were indicted for burglary in a dwelling-house, it appeared that the breaking was of a wooden box used as a shutter box, which partly projected from the wall of the house, and adjoined one side of the shop window. The side of the window was protected by wooden panels lined with plates of iron, and the shutter box had no communication with the house. This box was held not such a part of the dwelling-house as to be the subject of burglary. *R. v. Paine and Cooper, 7 C. & P. Ld. Denman, C. J., Park, J., and Bolland, B.*

Shutter box.

Page 187. § 23.—A permanent building used and slept in for a few days only during the year, and for the purposes of a fair, is a dwelling-house, although unoccupied during the remainder of the year. *R. v. Smith, Mo. & Rob. 256. Park, J. and Littledule, J.*

Casual inhabitation.

In the case of *R. v. Richard Beard*, for burglary, with intent to commit a rape, tried before Lord Lyndhurst, C. B. at Lancaster Summer assizes, 1834, it appeared that the prosecutor had taken a house in which he intended to reside, and he placed his three daughters in it to take care of it. The prosecutor had not slept in the house when the burglary was committed. Lord Lyndhurst held that it was not necessary that the house should have been slept in by the owner, and that if it were taken for the convenience of some part of his family that would be sufficient. *R. v. Richard Beard, MS.*

Placing children in a house.

IV. *Whose Dwelling-house.*—Page 188.

Page 188. § 5.—Where a servant lives in a house belonging to his master, though he pays no rent or taxes for it, and the master's business is carried on in the house,—yet if the servant and his family be the only persons who sleep in the house, and the part, where the

Whose dwelling house.

Capital Punishment.

master's business is carried on be at all times open to those parts in which the servant lives,—it may be stated as the servant's house; though the only part entered by the thief is that in which the master's business is carried on. *R. v. Witt, Ry. & M. C. C. 248.*

Partners.

Page 191. § 31.—A house, the joint property of several partners in trade, and in which their business is carried on, may be described as the dwelling-house of all the partners, though only one of them resides in it. *R. v. George Athea, R. & M. C. C. 329.*

VII. Indictment, &c.

Conviction.

Page 195. § 12.—Upon an indictment for burglary, charging the prisoner with stealing goods above the value of 20*l.*; it was held, that he might be convicted either of burglary, or of house-breaking, or of stealing in a dwelling-house to the value of 5*l.* *R. v. Compton and others, 3 C. & P. 418. Gaselee, J.*

Words of the statute.

Where an indictment for burglary, under 7 & 8 G. 4. c. 29. s. 11. charged, in one count that the prisoner “did break and get out,” and in another that he “did break and get out,” it was held that the indictment did not sufficiently describe the offence within the statute. *R. v. John Compton, 7 C. & P. Vaughan, J. and Patteson, J.*

Burial of the Dead.

Page 198.

Mandamus.

Although the Court of King's Bench will grant a *mandamus* to compel a clergyman to bury the corpse of a parishioner, if he refuses to bury it altogether; yet they will not grant the writ to compel him to bury it in any particular part of the church-yard, although the party applying for the writ may have a private vault in such part of the church-yard. *Ex parte Blackmore, 1 B. & Adol. 122.*

Capital Punishment.

Page 201.

Stealing in a dwelling house; stealing cattle; and killing cattle.

The 2 & 3 W. 4. c. 62, repeals the punishment of death for stealing in a dwelling-house to the value of 5*l.*;—for stealing horses or cattle;—and for killing cattle with intent to steal:—and substitutes the punishment of transportation for life, which the judge has no discretion to mitigate. And see 3 & 4 W. 4. c. 44. s. 3. *infra.*

Forgery.

The 2 & 3 W. 4. c. 123. repeals the punishment of death for forgery and uttering in all cases, except for the forging and uttering of wills, or of powers of attorney to transfer public stocks at the Bank of England, South Sea House, or Bank of Ireland, and substitutes the punishment of transportation for life, which the court has no discretion to mitigate. And see 3 & 4 W. 4. c. 44. s. 3. *infra.*

The 3 & 4 W. 4. c. 44. repeals this punishment for breaking and entering a dwelling-house, and stealing therein;—also, in cases of principals in the second degree and accessories before the fact to felonies punishable with death under 7 & 8 G. 4. c. 29. and substitutes the punishment of transportation for life, or not less than seven years, with or without previous imprisonment and hard labour for any term not exceeding four years,—or imprisonment, with or without hard labour, for any term not exceeding four years, nor less than one year. And, by *sect.* 3. of the same act, persons punishable by transportation for life, under statutes 2 & 3 W. 4. c. 62 & 123. are made liable to previous imprisonment, with or without hard labour, for any term not exceeding four years, nor less than one year.

Breaking and entering dwelling houses,—principals in second degree and accessories before the fact punishable under 7 & 8 G. 4. c. 29.

The 4 & 5 W. 4. c. 67. repeals this punishment upon persons returning from transportation, and makes them and also all aiders and abettors liable to be transported for life, with or without previous hard labour, for any term not exceeding four years.

Returning from transportation.

The 5 & 6 W. 4. c. 81, repeals so much of the 52 G. 3. c. 143, and 7 & 8 G. 4. c. 29, as inflicts the punishment of death for letter stealing, and other offences relating to the post-office,—and for sacrilege;—and enacts that every person convicted of such offences, “or of aiding, abetting, counselling, or procuring the commission thereof,” shall be liable to be transported for life, or for not less than seven years, or to be imprisoned with or without hard labour for any term not exceeding four years.

Letter stealing, &c., and sacrilege.

See *Hurdner*, XI. *post.*

Cattle.

I. Killing or Maiming. Page 203.

Setting fire to a cow-house and burning to death a cow which is in it, is a killing of the cow within the meaning of 7 & 8 G. 4. c. 30. s. 16. *R. v. Haughton*, 5 C. & P. 559. *Taunton*, J.

What a killing.

Page 204. § 7.—Pouring acid into the eye of a mare, and thereby blinding her, is a maiming within the 7 & 8 G. 4. c. 30. s. 17. *R. v. Owen Owens*, Ry. & M. C. C. 205.

What a maiming.

Vide the case of *R. v. Wm. Mogg*, 4 C. & P. 364., for administering sulphuric acid to horses with intent to kill them.

II. Cruelty to. Page 205.

By 21 G. 3. c. 67. s. 1.—after reciting that the improper and cruel manner in which cattle are driven through the streets of London had occasioned great mischief, and endangered the lives of many of his majesty's subjects,—it is enacted, that if any person hired or employed to drive any cattle within London, or the bills of mortality, shall, by negligence or ill usage in driving them, be the means that any mischief shall be done by them; or if any drover shall in anywise misbehave himself in the driving, care, or management of such cattle; any constable, or peace officer, upon view thereof, or information of any person who shall declare his name

Improperly driving them.

and place of abode to the officer, may seize and secure the offender, without any warrant, and convey him before some justice of the peace; who may convict him, on the oath of one witness, in a penalty, not exceeding 20s., nor less than 5s., to be paid to the prosecutor; and in default of payment, he may be committed to hard labour for not more than one month.

Penalty on party not attending the justice;

By *section 3*. In case the person giving such information shall neglect or refuse to attend, without some lawful excuse to be allowed by the justice, within the space of six hours from the time of making such information; the party so offending, upon proof being made on the oath of the officer that such person had given such information, forfeits not exceeding 40s., nor less than 10s., to the officer, which may be levied by distress.

or for refusing to give his name.

By *section 7*. If any person apprehended for having committed any offence against the act, shall refuse to discover his name and place of abode to the justice before whom he shall be brought, he may be committed for one calendar month, or until he shall declare his name and place of abode.

Execution of warrants.

By *section 9*. Warrants may be executed on offenders, or their goods, out of the jurisdiction wherein they were granted, upon being indorsed by a justice in another jurisdiction.

Limitation of prosecutions, &c.

By *section 10*. Prosecutions must be commenced within fourteen days after the offence committed; by *section 11*., an appeal is given to the sessions; and by *section 12*., no order of a justice is to be quashed for want of form, nor is any proceeding removable by *certiorari*.

By the 5 & 6 W. 4. c. 59. s. 1.; the 3 G. 4. c. 71., and 3 & 4 W. 4. c. 19. s. 29., are repealed.

Any person wantonly and cruelly beating or otherwise ill-treating any cattle, &c., or improperly driving the same, whereby any mischief shall be done, shall, upon conviction, be fined, and in default of payment committed to prison.

By *section 2*. "If any person shall wantonly and cruelly beat, ill-treat, abuse, or torture any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, dog, or any other cattle or domestic animal, or if any person who shall drive any cattle or other animal shall, by negligence or ill usage in the driving thereof, be the means whereby any mischief, damage, or injury shall be done by any such cattle or other animal, every such offender, on conviction before one justice, shall forfeit and pay (over and above the amount of the damage or injury (if any) done thereby, such damage or injury to be ascertained and determined by such justice,) not exceeding 40s., nor less than 5s., with costs; or, in default of payment, be imprisoned not exceeding fourteen days;—proviso that nothing in the act shall prevent or abridge any remedy by action against the employer of any such offender where the amount of the damage is not sought to be recovered by virtue of the act.

Persons keeping pits for fighting dogs or baiting bears, &c., made liable to penalties.

By *section 3*. "If any person shall keep or use any house, room, pit, ground, or other place for the purpose of running, baiting, or fighting any bull, bear, badger, dog, or other animal (whether of domestic or wild nature or kind,) or for cock-fighting, or in which any bull, bear, badger, dog, or other such animal shall be baited, run, or fought, every such person shall be liable to a penalty not exceeding 5*l*., nor less than 10s., for every day in which he shall so keep and use such house, room, pit, ground, or place for any of the purposes aforesaid: and the person who shall act as the manager of any such

house, &c., or shall receive money for the admission of any person thereto, or who shall assist in any such baiting, &c., shall be deemed the keeper of the same for the purposes of this act, and be liable to the penalties imposed by the act.

The person who shall be the manager of such house to be deemed the keeper.

By *section 4*. Reciting "that great cruelties are practised by reason of keeping and detaining horses, asses, and other cattle and animals impounded and confined without food frequently for many days;" for remedy it is enacted, that every person who shall impound or confine any cattle or animal, in any common pound, open pound, or close pound, or in any inclosed place, shall supply such horse, ass, and other cattle or animal so impounded or confined, daily with good and sufficient food for so long a time as such cattle or animal shall remain and continue so impounded or confined as aforesaid; and every person who shall supply any cattle or animal, with food as aforesaid, shall and are thereby empowered to recover from the owners of such cattle or animal not exceeding double the full value of the food so supplied to such cattle or animal as aforesaid, by proceeding before a justice of the peace, in like manner as any penalty or damage may be recovered under the act, and which value of the food so supplied, such justice is empowered to ascertain, determine, and enforce as aforesaid; and every person who shall have so supplied such food as aforesaid shall be at liberty, if he shall so think fit, instead of proceeding for the recovery of the value thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same, to sell any such cattle or animal, openly at any public market (after having given three days public *printed* notice thereof) for the most money that can be then got for the same, and to apply the produce in discharge of the value of such food so supplied as aforesaid, and the expenses of and attending such sale, rendering the overplus (if any) to the owner of such cattle or animal.

Parties impounding cattle to provide sufficient food for them.

Remedy for the recovery thereof.

By *section 5*. In case any cattle or animal shall at any time so remain impounded or confined as aforesaid without sufficient daily food or nourishment more than twenty-four hours, it shall be lawful for any person from time to time and as often as shall be necessary to enter into and upon any common, open or close pound, or other inclosed place in which any such cattle or animal shall be so impounded or confined, and to supply such cattle or animal with such good and sufficient food and nourishment during so long as such cattle or animal shall so remain and continue impounded or confined as aforesaid, without being liable to any action of trespass or other proceeding by any person or persons whomsoever for or by any reason of such entry or entries for the purposes aforesaid.

Persons may enter pounds for the purpose of feeding cattle.

By *section 6*. In case any such person who shall so impound or confine, or cause to be impounded or confined, any cattle or animal, shall refuse or neglect to provide, and supply daily good and sufficient food and nourishment to such cattle and animal, he and they shall for every day during which he or they shall so refuse or neglect, forfeit and pay the sum of 5s.; to be recoverable before one justice of the peace in like manner as therein-before provided for the recovery of any penalty, forfeiture, damage, or injury as therein-before mentioned.

Penalty on parties neglecting to feed impounded cattle.

By *section 7*. Reciting "that great cruelty is practised by reason of diseased, old, and worn-out horses sold or taken to knackers or

Penalties on slaughtering horses, &c., without a licence.

slaughtermen for the purpose of slaughter, being frequently resold or compelled to work, or kept without sufficient food;" for remedy whereof it is further enacted, that if any person keeping or using any house or place for the purpose of slaughtering or killing any horse or cattle (which shall not be for butcher's meat) shall at any time hereafter slaughter or kill any horse or cattle (not being for butcher's meat) without having previously taken out a licence for that purpose, and without having previously affixed over the outer gate or entrance from the public highway to said licensed premises the board and inscription in manner and form prescribed according to the provisions of the 26 G. 3. c. 71., every such person shall for every such offence forfeit and pay not exceeding 5*l.*, nor less than 10*s.*, or be liable to such punishment as in the said act is provided.

Horses to be slaughtered within three days after purchase, and in the meantime to be provided with food.

By *section 8.* Every person so keeping or using any house or place for the purpose of slaughtering or killing horses or other cattle shall kill and slaughter every such horse or cattle within three days next after the same shall have been purchased by or brought and delivered to him, or any person in his service or employ, for the purposes aforesaid, and shall also in the meantime, and until slaughtered, find and provide such horse or other cattle with good and sufficient daily food and nourishment, and shall also, at the time of receiving such horse or cattle for the purposes aforesaid, enter in the book which by the said act of 26 G. 3. c. 71., is required to be kept by such person, a correct description of the colour and gender of the horse so purchased by or delivered to him for the purposes aforesaid, with the date of receiving the same; and if any such horse or other cattle so received for the purpose aforesaid shall be employed in any manner of work, or shall not be supplied with good and sufficient food during the time he shall survive, every such person so receiving every such horse or other cattle shall for each and every such offence forfeit and pay not exceeding 40*s.*, nor less than 5*s.*, for every day on which such offence shall be committed or continued.

Any constable, peace officer, or owner of cattle, may seize offenders.

By *section 9.* "For the more easy and effectual apprehension of all offenders against the act, it is further enacted, that when and so often as any of the said offences shall happen, any constable or other peace officer, or the owner of any such cattle or animal, upon view thereof, or upon the information of any other person (who shall declare his, her, or their name or names and place or places of abode to the said constable or other peace officer,) may seize and secure, and without any warrant convey any such offender before any justice of the peace, to be dealt with according to law, and such justice shall examine witnesses upon oath.

As to names of offenders.

By *section 10.* If any person who shall be apprehended for having committed any offence against that act shall refuse to discover his name and place of abode to the justice before whom he shall be brought, such person refusing shall immediately be delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction, there to remain not exceeding one calendar month, or until he shall make known his name, &c.

Limitation as to summary proceedings.

By *section 11.* The prosecution of every offence punishable under that act shall be commenced within three calendar months next after the commission of the offence, and not otherwise; and the evidence of the party complaining shall be admitted in proof of the offence, and also the evidence of any overseer or inhabitant of the parish in

which the offence shall have been committed, notwithstanding any penalty may be payable to the overseers of the poor of such parish.

By *section 12*. In every case of a conviction under that act, where the sum awarded for damage or injury done, or imposed as a penalty by any justice for any offence contrary to that act, shall not be paid either immediately upon or after the conviction, or within such period as such justice shall appoint, such Justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, to be imprisoned,—or imprisoned and kept to hard labour,—not exceeding fourteen days, where the sum or sums, with costs, shall not exceed 5*l.*;—and not exceeding two calendar months where the amount, with costs, shall exceed 5*l.*;—the commitment to be determinable upon payment.

By *section 13*. Upon information within fourteen days a justice may summon the party accused; and in default of appearance may proceed *ex parte*.

Section 14. gives the form of a conviction.

By *section 15*. Any summons to be deemed sufficiently served in case either the summons or a copy be served personally on such person, or be left at his usual or last known place of abode, in whatever county situated.

By *section 16*. If any constable or other peace officer shall refuse or neglect to serve or execute any summons or warrant, on being convicted thereof before any justice, he shall forfeit a sum not exceeding 5*l.*, and in default of payment shall be committed—not exceeding one calendar month, unless the penalty shall be sooner paid.

By *section 17*. One moiety of penalties shall be paid to the overseers of the poor of the parish, and the other moiety, with full costs, to the person who shall inform and prosecute, or to such other person as to the justice shall seem fit; and every sum of money ordered to be paid as the amount of any damage or injury, shall be paid to the person who shall or may have sustained such damage or injury.

By *section 18*. Any person making an information, or other person, shall be a competent witness, notwithstanding he may be entitled to any part of the *penalty* on the conviction of any offender.

By *section 19*. All actions and prosecutions against any person for any thing done under the act, shall be commenced within one calendar month and not afterwards, and shall be brought in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of any action, specifying the cause to be given to the defendant fourteen clear days before the commencement of any action; the defendant may plead the general issue, and if defendant succeeds he shall have costs as between attorney and client; but if the plaintiff succeeds he is not to have costs unless the judge certifies.

By *section 20*. Any person aggrieved by any adjudication or conviction made by any justice, may appeal, on giving fourteen days notice of the cause and matter thereof to such justice, to the next quarter sessions to be held next after the expiration of the said fourteen days.

Section 21. Construction of terms used in the act.

By 3 & 4 W. 4. c. 19. s. 28. All the provisions of 21 G. 3. c. 67. shall be in force within five miles from *Temple Bar*; and certain penalties are imposed upon persons for hunting or driving cattle contrary to that act.

As to convictions.

Mode of proceeding for penalties, &c.
Form of conviction.

What a sufficient service of summons.

Penalty on constable, &c., refusing or neglecting to serve summons, &c.

Distribution of penalties, &c.

Informants or others not disqualified.

Limitation of actions.

Appeal to quarter sessions.

Central Criminal Court.

By 4 & 5 W. 4. c. 36. A Metropolitan Court of Oyer and Terminer, and General Gaol Delivery, bearing this name, has been established.

The Lord Mayor of London, the Lord Chancellor, the judges, the aldermen, recorder, and common serjeant of London, and such others as His Majesty may appoint, to be judges of the court.

His Majesty may issue a commission of Oyer and Terminer and gaol delivery for London and Middlesex, and certain parts of Essex, Kent, and Surrey.

By *sect. 1.* The Lord Mayor of *London*, the Lord Chancellor, the Judges of the Courts at *Westminster*, the Judges in Bankruptcy, the Judge of the Admiralty, the Dean of the Arches, the Aldermen of *London*, the Recorder, the Common Serjeant, and the Judges of the Sheriffs' Court of *London*, and any person or persons who hath or shall have been Lord Chancellor, or a Judge of any of the Courts at *Westminster*, together with such others as his Majesty shall from time to time appoint by any general commission as thereafter stated, shall be and be taken to be the Judges of a Court to be called the "Central Criminal Court," to which his Majesty may direct his general commission as therein-after mentioned; and which court shall have jurisdiction to hear, try, and determine all offences committed or alleged to be committed as therein-after specified.

By *sect. 2.* It shall be lawful for his Majesty from time to time to command and cause to be issued commissions of oyer and terminer to inquire of, hear, and determine all treasons, murders, felonies, and misdemeanors committed within the city of *London* and county of *Middlesex*, and those parts of the counties of *Essex*, *Kent*, and *Surrey*, within the parishes of *Barking*, *East Ham*, *West Ham*, *Little Ilford*, *Low Layton*, *Walthamstow*, *Wanstead St. Mary*, *Woodford*, and *Chingford*, in the county of *Essex*; *Charlton*, *Lee*, *Lewisham*, *Greenwich*, *Woolwich*, *Eltham*, *Plumstead*, *St. Nicholas Deptford*, that part of *St. Paul Deptford* which is within the said county of *Kent*, the liberty of *Kidbrook*, and the hamlet of *Mottingham*, in the county of *Kent*; and the borough of *Southwark*, the parishes of *Battersea*, *Bermondsey*, *Camberwell*, *Christchurch*, *Clapham*, *Lambeth*, *St. Mary Newington*, *Rotherhithe*, *Streatham*, *Barnes*, *Putney*, that part of *St. Paul Deptford* which is within the said county of *Surrey*, *Tooting Graveney*, *Wandsworth*, *Merton*, *Mortlake*, *Kew*, *Richmond*, *Wimbledon*, the *Clink* liberty and the district of *Lambeth Palace*, in the county of *Surrey*;—and also commissions of gaol delivery to deliver his Majesty's gaol of *Newgate* of the prisoners therein charged with any of the offences aforesaid, committed within the limits aforesaid;—and it shall be lawful for the justices and judges of the Central Criminal Court aforesaid, or any two or more of them, to inquire of, hear, determine, and adjudge all such treasons, murders, felonies, and misdemeanors, and all treasons, murders, felonies, and misdemeanors which might be inquired of, heard, and determined under any commission of oyer and terminer for the city of *London* or county of *Middlesex*, or commission of gaol delivery to deliver the gaol of *Newgate*; or which, in case the parts of the counties of *Essex*, *Kent*, and *Surrey* respectively comprised within the limits aforesaid had been counties of themselves, might have been inquired of, heard, and determined under commissions of oyer and terminer and gaol delivery for such counties,—and to deliver the said gaol of *Newgate* at such times and places in the said city or the suburbs thereof as by the said commissions shall be

appointed, or as the said justices and judges by virtue and in pursuance thereof, or any two or more of them, shall appoint,—and to award and issue all precepts and process, and use and exercise all powers and authorities belonging to justices of oyer and terminer and gaol delivery :—Proviso, that such court shall have power and jurisdiction to proceed on every such commission so issued as aforesaid and act under such commission until a new commission shall be issued.

By *sect. 3.* The district situated within the limits of the jurisdiction therein-before established shall be deemed and taken to be, in all cases tried before the said justices and judges, one county for all purposes of venue, local description, trial, judgment, and execution, not therein specially provided for; and in all indictments and presentments preferred and tried before the said justices and judges the venue laid in the margin shall be as follows, “ Central Criminal Court to wit;” and all offences which in other indictments would be laid to have been committed in the county where the trial is had, and all material facts which would be in other indictments averred to have taken place in the county where the trial is had, shall, in indictments prepared and tried in the said court, be laid to have been committed and averred to have taken place “ within the jurisdiction of the said court.”

New district to be considered as one county, and venue to be “ Central Criminal Court to wit,” &c.

By *sect. 4.* The sheriffs of *London*, and of the counties of *Middlesex*, *Essex*, *Kent*, and *Surrey*, respectively, shall execute and obey all precepts and process which the said justices and judges shall award, issue, and direct unto them respectively, and shall, whenever required and commanded, summon and return from the said city of *London*, and county of *Middlesex*, and from the parts of the said counties of *Essex*, *Kent*, and *Surrey* within the limits of this Act, a competent number of persons qualified according to law to inquire of, present, and try all offences and other matters cognizable by the said justices and judges; and the persons so returned, whether taken wholly from the city of *London* or the said counties, or taken indiscriminately from the said city and the said counties, shall have authority to inquire of, present, hear, try, and determine all such offences and other matters, and all issues and all matters of fact arising out of such trials or relating thereto, notwithstanding that such persons are not inhabitants of the city, county, or place where such offences or other matters may be committed or arise; and any person having served upon any grand jury or petty jury summoned and returned from the said counties of *Essex*, *Kent*, and *Surrey*, under the authority of this Act, shall henceforth be exempt for and during twelve calendar months next after such service from serving upon any jury in any court (except the sessions of the peace) to be holden for the county in which such juror shall reside.

Power to summon juries from *London* or from the counties, or from both indiscriminately, to try all offences, cognizable by the act.

As to jurors residing within the limits of the act in *Essex*, *Kent* and *Surrey*.

By *sect. 5.* Reciting that for the more convenient distribution of prisoners, as well before trial as after, and for rendering more effectual the punishment of imprisonment, it might be expedient that power should be given to appoint from time to time in what places of confinement within the limits of the act such prisoners should be kept in custody;—it is enacted that it shall be lawful for his Majesty, by the advice of his Privy Council, from time to time to order and direct in what gaol, house of correction, or other prison, being within the limits of the act, any person or persons charged with or convicted of offences

His Majesty by order in council, to appoint the places of confinement for prisoners.

committed or alleged to have been committed within the limits of the act shall be imprisoned or kept in custody; and that when and so often as his Majesty shall be pleased to give such orders and directions, the said justices and judges of oyer, &c., and all justices of the peace, coroners, and other magistrates acting within the limits of the act, shall commit all persons charged or convicted before them to such gaol, house of correction, or other prison as in such orders or directions shall be expressed and commanded, any law, usage, or custom to the contrary notwithstanding;—proviso, that the city, county, or place in which the offence of such person or persons was committed or alleged to have been committed shall be liable to and charged with the expense of supporting and maintaining such prisoner during his imprisonment in such gaol, house of correction, or other prison, at and after such rate as his Majesty, by the advice of his Privy Council, shall order and direct, and shall be paid by the treasurer of the said city, county, or place in which such offence was committed or alleged to have been committed:—and also,—that the county of *Middlesex* and city of *Westminster* and liberty of the *Tower of London* shall not be liable to any charge for the support and maintenance of any prisoner charged with any offence in the said county, city, or liberty, who shall be committed to the gaol of *Newgate*.

His Majesty may direct the Penitentiary at *Milbank* to be one of the prisons.

Persons sentenced to imprisonment beyond the limits of this act may be removed to the Penitentiary at *Milbank*.

Regulations in all Penitentiary acts shall apply to prisoners confined there by the authority of this act.

Persons convicted may be imprisoned either in the county gaol or in *Newgate*.

Sheriffs of *London* may execute judgments.

By *sect. 6*. The penitentiary at *Milbank* shall be one of the prisons in which his Majesty may direct any persons charged or convicted of offences within the limits of the act to be imprisoned.

By *sect. 7*. His Majesty, by an order to be notified in writing by one of his Majesty's principal secretaries of state, may direct that persons who may be sentenced to imprisonment by any court or competent authority for any offence committed beyond the limits of the act, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed, shall be removed to the penitentiary at *Milbank*, there to be imprisoned for and during their respective terms of imprisonment.

By *sect. 8*. All provisions contained in all acts made for the government of the penitentiary at *Milbank*, and all powers given by such acts for the confinement, employment, and management of convicts removed thereto, shall be applicable and made available in respect of all persons who may be removed or sent to such penitentiary in pursuance of any order in council.

By *sect. 9*. It shall be lawful for the said justices and judges, or any two or more of them, to commit any person or persons who shall be brought before them charged with any offence cognizable by such justices and judges under the act, or who shall be convicted or attainted before them, to such gaol, house of correction, or other prison as may be specified in any order of council to be made by virtue of this act, or if no such order shall have been made, then to the common gaol, house of correction, or other prison of the city, county, or place to which such offender might have been committed if the act had not passed, or to his Majesty's gaol of *Newgate*, there to remain until discharged by due course of law, or in execution of his or their respective judgments; and in case of commitment to the gaol of *Newgate*, execution of such judgments shall and may be had and done upon such person or persons by the sheriffs of the said city of *London* in the same way

and as fully to all intents and purposes as if the offence of which such person or persons was or were convicted had been committed in the said city of *London*.

By *sect. 10*. Until his Majesty shall, by the advice of his Privy Council, order and direct in what gaol, house of correction, or other prison persons charged with or convicted of offences committed or alleged to have been committed within the limits of that act shall be imprisoned or kept in custody, it shall be lawful for any justice of the peace or coroner for the said counties of *Essex* or *Kent*, so far as relates to the several parishes therein-before mentioned within their respective counties, to commit persons charged with any of the offences cognizable by the said justices and judges of oyer, &c. by virtue of that act to the gaol of *Newgate*; and also for any justice of the peace or coroner for the said county of *Surrey*, so far as relates to the several parishes therein-before mentioned lying within the said county of *Surrey*, to commit any person charged with any of the offences cognizable by the said justices and judges of oyer, &c. by virtue of that act to the gaol of *Horsemonger Lane* or *Newington* in the county of *Surrey*.

By *sect. 11*. Justices or coroners acting within the limits of that act shall specify in commitments that the person or persons charged are committed under the authority of that act; and such justice or coroner shall in all such cases take the like examinations, informations, bailments, and recognizances, and certify the same to the said justices of oyer and terminer and gaol delivery, as they are required to do by the 7 G. 4. c. 64.; and any justice of the peace or coroner, in default of so doing, shall be liable to the same fines and penalties to be imposed by the said justices and judges of oyer, &c. in the same manner as is mentioned in the said act; and when any person or persons shall be committed to his Majesty's gaol for the county of *Surrey* for any offence cognizable by the said justices and judges of oyer, &c. by virtue of that act, by a commitment specifying that such person or persons is or are committed under the authority of that act, the sheriff of *Surrey*, or the keeper of the gaol for the said county, shall, six days at least before the sitting of the next court of oyer, &c. under that act, or at such other time as the said justices and judges of oyer, &c., or any two or more of them, shall from time to time direct, cause such person and persons, with their commitments and detainers, to be safely removed from the gaol of the said county of *Surrey*, without the issuing of any writ of habeas corpus, or other writ, to the said gaol of *Newgate*, there to remain until delivered by due course of law.

By *sect. 12*. It shall be lawful for any two of the said justices and judges of oyer, &c. to order and direct the costs and expenses of prosecutors and witnesses, in all cases where prosecutors and witnesses may be by law entitled thereto, to be paid by the treasurer of the county in which the offence of any person prosecuted would have been tried but for the act; and that every such treasurer or some known agent shall attend the said justices and judges of oyer, &c. during the sitting of the court, to pay all such orders.

By *sect. 13*. No bill of indictment for any misdemeanor (other than perjury or subornation of perjury) which might be presented to the grand jury at any sessions of the peace for *Westminster*, *Southwark*, *Middlesex*, *Essex*, *Kent*, and *Surrey* respectively, shall be presented to the grand jury of this court, unless the prosecutor or

Justices and coroners in *Essex* and *Kent* may commit offenders to *Newgate*, and justices and coroners in *Surrey* may commit offenders to *Horsemonger Lane*.

Justices and coroners to specify that persons are committed under this act, and to take examinations, &c., as required under 7 G. 4. c. 64.

Power to remove prisoners from county gaol of *Surrey* to *Newgate*.

Power to order payment of expenses to prosecutors and witnesses.

Treasurers of counties or agents to attend the court to pay.

Bills of indictment for any misdemeanors not to be presented to the

grand jury unless the prosecutor, &c., has been bound by recognizance or prisoner committed.

Court of the Lord Mayor and aldermen of London may contract with the justices of Essex, Kent, and Surrey, for the support of their prisoners in Newgate. If they cannot agree, the judges to settle the amount. Sessions to be holden in London or the suburbs twelve times at least in every year. Indictments found at the sessions of the peace may be removed before justices of oyer and terminer and gaol delivery.

Quarter sessions restrained from trying certain offences.

person presenting such indictment shall have been bound by recognizance to prosecute or give evidence at the sessions to be held under the authority of that act against the person or persons accused of such misdemeanor, or unless such person or persons accused shall have been committed to or detained in custody, or shall be bound by recognizance to appear at the said sessions to be held under the authority of the act.

By *sect. 14.* It shall be lawful for the court of the Lord Mayor and aldermen of *London*, having the government and ordering of the said gaol of *Newgate*, to enter into agreement with the justices of the peace for the said counties of *Essex, Kent, and Surrey*, for the support and maintenance in the said gaol of *Newgate* of any prisoner or prisoners so committed or removed thereto under the authority of the act; and in case of disagreement, then the rate and manner in which such support and maintenance shall be paid shall be fixed and determined by such of the said justices and judges of oyer, &c., or any two or more of them, as hath or shall have been justices of the courts at *Westminster*.

By *sect. 15.* The said justices and judges of oyer, &c., or any two or more of them, shall hold a session in the said city of *London* or suburbs thereof, at least twelve times in each and every year (and oftener if need be), such times to be fixed by general orders of the said court, which any eight or more of the said judges of his Majesty's courts of *Westminster* are hereby empowered to make from time to time.

By *sect. 16.* It shall be lawful for his Majesty's Court of King's Bench, or any judge thereof, or any commissioner of oyer and terminer and gaol delivery under that act, being a judge of any of the courts at *Westminster*, or any judge of the Court of Bankruptcy, or the recorder of *London*, if such court, judge, or recorder shall think proper, to issue any writ or writs of *certiorari*, or other process, directed to justices of the peace for the cities of *London* and *Westminster*, the liberty of the *Tower of London*, the borough of *Southwark*, and the counties of *Middlesex, Essex, Kent, and Surrey*, or either of them, commanding the said justices of the peace, or any or either of them, to certify and return into the said court of oyer, &c. indictments or presentments found or taken before the said justices of the peace, or any of them, of any offences cognizable by virtue of that act, and the several recognizances, examinations, and depositions relative to such indictments and presentments, so that the same offences may be dealt with, tried, and determined by the said justices and judges of oyer, &c.; and also for the like purpose, by writ or writs of habeas corpus, to cause any person or persons who may be in the custody of any gaol or prison charged with any offences cognizable under that act to be removed into the custody of the keeper of the gaol of *Newgate*.

By *sect. 17.* The justices of the peace for *London, Westminster, the Tower of London, Southwark, Middlesex, Essex, Kent, and Surrey*, shall not, at their respective sessions of the peace, try any person or persons charged with any capital offence, or with any of the following offences committed or alleged to be committed within the limits of that act; that is to say, housebreaking,—stealing above the value of five pounds in a dwelling-house,—horse-stealing,—sheep-stealing,—cattle-stealing,—maliciously wounding cattle,—bigamy,—forgery,—perjury,—conspiracy,—assault with intent to commit any felony,

—administering or attempting to administer poison with intent to kill or to do some grievous bodily harm,—administering drugs or other things or doing any thing with intent to cause or procure abortion,—manslaughter,—destroying or damaging ships or vessels,—the breaking of shops, warehouses, counting-houses, and buildings within the curtilage of dwelling-houses,—killing sheep with intent to steal the carcases,—the uttering of all forged instruments,—and the various offences enumerated in the 11 G. 4. & 1 W. 4. c. 66. *for amending the laws relative to forgery*,—forging the assay marks on gold or silver plate,—and all the offences relating to coin enumerated in the 2 and 3 W. 4. c. 34. *for consolidating and amending the laws against offences relating to the coin*,—the abduction of women,—bankrupts not surrendering under their commission or concealing their effects,—breaking down bridges and banks of rivers,—taking rewards for helping to stolen goods,—personating any officer, seaman, or other persons in order to receive any wages, pay, allowance, or prize money due or supposed to be due, or any out-pensioner of *Greenwich* hospital in order to receive any out-pension allowance due or supposed to be due,—sending threatening letters and using threats to extort money,—larceny on navigable rivers and canals,—and stealing and destroying goods in progress of manufacture,—and larcenies after a previous conviction,—embezzlement,—larceny by clerks and servants,—and receivers of stolen goods, whether such person or persons shall be charged as principal offenders or as accessories before or after the fact.

11 G. 4. &
1 W. 4. c. 66.

2 & 3 W. 4. c. 34.

By *sect. 18*. Every recognizance entered into for the prosecution, before justices of the peace, of any person for any offence cognizable under that act, and any recognizance for the appearance as well of any witness to give evidence upon any bill of indictment or presentment as of any person to answer concerning any such offence, or to answer generally before such justice of the peace, shall, in case any such writ of *certiorari* or *habeas corpus* be issued for the purpose of removing such indictment or presentment, or such person so in custody as aforesaid, be obligatory on the parties bound by such recognizance to prosecute, and appear, and give evidence, and do all other things therein mentioned with reference to the indictment or presentment, or the person so removed, as aforesaid, before the justices and judges of oyer, &c. acting by virtue of that act, in like manner as if such recognizance had been originally entered into for prosecuting such offence, appearing, or giving evidence, or doing such other things before the said justices and judges of oyer, &c.; provided that in cases of removal from the jurisdiction of justices of the peace for *London, Westminster, the Tower of London, Southwark, Middlesex, and Surrey*, two days notice, and in case of removal from the jurisdiction of the justices of the peace for *Essex and Kent*, one week's notice shall have been given, either personally, or by leaving the same at the place of residence as of which the parties, bound by such recognizance, are therein described, to appear before the said court of oyer, &c., instead of the said other justices: proviso, that the court, judge, or recorder who shall grant such writ of *certiorari* or *habeas corpus* shall cause the party applying for such writ or writs, whether he be the prosecutor or party charged with such offence, to enter into a recognizance in such sum, and with or without sureties, as the court, judge, or recorder may direct,

Recognizances for prosecuting, giving evidence, &c., before sessions of peace to be obligatory on persons entering into same to prosecute, give evidence, &c., before justices of oyer and terminer and gaol delivery.

Notice to be given to parties entering into recognizances of change of court.

Central Criminal Court.

conditioned to give such notice as aforesaid to the parties bound by such recognizance to appear before the said court of oyer, &c., instead of before the said other justices respectively, and to do such other things as such court, judge, or recorder shall direct.

Justices of peace may deliver over indictments found at sessions to the justices of oyer and terminer and gaol delivery.

By *sect. 19.* The justices of the peace for *London, Westminster, the Tower of London, Southwark, Middlesex, Essex, Kent, and Surrey*, if they shall think fit, may certify, transmit, and deliver to the said justices and judges of oyer, &c. any indictment or presentment found or taken before them at their said respective sessions of the peace, for any offence or offences cognizable by the said justices and judges of oyer, &c. in the same manner as the said justices of the peace might or could do, if the said court of oyer, &c. was holden in the county where such indictments or presentments were found or taken.

Justices to settle officers' fees, or a salary, and direct how the same shall be paid.

By *sect. 20.* The said justices and judges of oyer, &c., in sessions assembled, are to make, and from time to time to alter a table of fees and allowances to be received and taken by the several officers of the said court, which shall be hung up in the court of sessions, and a copy thereof transmitted to the clerks of the peace of *Middlesex, Essex, Kent, and Surrey*; or the said justices and judges may settle a salary, in lieu of such fees and allowances, to be paid to the said officers, or either of them, for the performance of their respective duties, as to the said justices and judges of oyer, &c. shall seem reasonable and just, and to order and direct how and in what manner, and by whom such fees and allowances, or salary, shall be paid, and also to order and direct such portion, as they shall think fit, of the expense of preparing calendars and sessions papers, and of other expenses incident to the act, to be borne and paid by the treasurer of each of the said counties, and such portion shall be paid by such treasurers accordingly: provided that the county of *Middlesex* shall not be liable to any portion of the expense of preparing calendars or sessions papers, or of any other expenses incident to the act, to which the said county would not have been liable in case the act had not been passed.

Sessions of the peace not to be affected by the sessions holden in pursuance of this act.

By *sect. 21.* Nothing in the act shall prevent the justices of the peace for *London, Westminster, the Tower of London, Southwark, Middlesex, Essex, Kent, and Surrey*, from holding their respective general or quarter sessions of the peace during the sitting of the Central Criminal Court; and that neither the act, nor the commissions of oyer, &c. from time to time to be issued under the authority of the act, shall supersede, interfere with, or affect any other commission or commissions of oyer, &c. for *Essex, Kent, and Surrey*.

Authorizing court to try offences committed on the high seas.

By *sect. 22.* It shall be lawful for the justices and judges of oyer, &c. to be named in, and appointed by the commissions to be issued under the authority of that act, or any two or more of them, to inquire of, hear, and determine any offence or offences committed or alleged to have been committed on the high seas, and other places within the jurisdiction of the admiralty of *England*, and to deliver the gaol of *Newgate* of any person or persons committed to, or detained therein for any offence or offences alleged to have been done and committed upon the high seas aforesaid, within the jurisdiction of the admiralty of *England*; and all indictments found, and trials and other proceedings had and taken by and before the said justices and

judges of oyer, &c. shall be valid and effectual to all intents and purposes whatsoever ; and it shall and may be lawful for any three of the said justices and judges of oyer, &c. to order and direct the payment of the costs and expenses of such prosecutions in manner directed by the act of 7 G. 4. c. 64.

By *sect. 23.* Nothing in the act shall prejudice or affect the rights, privileges, authorities, &c. of the lord mayor, aldermen, and recorder of the city of *London*, or their successors, the sheriffs of the city of *London* and county of *Middlesex*, for the time being, or to alter or diminish any power, &c. the said lord mayor, &c. might lawfully use or exercise ; and that, notwithstanding any practice or custom of the said city of *London* to the contrary, it shall be lawful for the lord mayor's court of the city of *London* to sit on any day on which any session of the peace, oyer, &c. shall be held within the said city.

Saving the rights and privileges of *London*.

By *sect. 24.* The act commenced and took effect *from and after* the 31st *October*, 1834.

Commencement of act.

And by *sect. 26.* The act is to be deemed a public act.

Public act.

It has been decided in a case of conspiracy, that the binding over to prosecute, mentioned in the 13th *section* of the act, must take place previously to the session at which the misdemeanor is to be tried ; and the prosecutor cannot be bound over by this court itself, so as to enable him to present a bill of indictment to the grand jury. *R. v. Carlton*, 6 C. & P. 651. *Tindal, C. J.*

Binding over to prosecute for a misdemeanor.

Sect. 17. of the act takes away the power of the court of quarter-sessions to try that offence, but the common law power of the grand jury to find a bill at the quarter-sessions, is not taken away, and continues unless the prosecutor is bound to appear at this court. The course, therefore, is to remove any indictment when found by *certiorari* (under *sect. 16.* of the act) from the quarter-sessions into this court. *Id.*

Quarter-sessions' grand jury may find a bill.

Certiorari.

I. Where it lies.

Page 207. § 2.—Although the writ of *certiorari* can only be taken away by express words, yet the provisions of a former act of parliament may be so incorporated in a new act, by *reference merely*, as to take it away. *R. v. Fell*, 1 B. & Ad. 380.

Reference to former act.

II. For what Causes granted.—Page 208.

It is by no means usual for the court of King's Bench to grant a *certiorari* for the removal of an indictment from the Old Bailey, because there the judges of the superior courts attend to try the indictments ; but, in a case of misdemeanor, under very special circumstances, the court granted the writ for removing the indictment from the Central Criminal Court, the defendant alleging that various important questions would arise, which, if the indictment were tried in the court of King's Bench, might not only be decided by a judge, but the decision afterwards reviewed by the court *in banc*, and that he was desirous of having a special jury and the assistance

Central criminal court.

of king's counsel, which advantages he could not enjoy if the trial took place in the Central Criminal Court. *R. v. Caldecott and others*, 3 *Dow*, P. C. 315.

Perjury in
Chancery pro-
ceedings.

And in a case of perjury, charged to have been committed in an answer to a bill in Chancery, the court of King's Bench granted the writ, at the instance of the defendant, for the removal of the indictment from the Central Criminal Court, on the suggestion that it involved points of law arising out of proceedings in the court of Chancery relative to matters of account. *R. v. Wartnaby*, 2 A. & E. 435.

Middlesex
sessions ;
vagueness of
charge.

In one case the court refused an application on the part of the defendant for a *certiorari* to remove an indictment from the *Middlesex* quarter-sessions, on the ground of its vagueness, the charge being that the defendants were common cheats and had conspired to obtain goods and chattels, not stating from whom. *R. v. Brain and others*, 2 A. & E. 436, n. (b).

IV. *Practice of applying for it.*—Page 210.

By 5 & 6 W. 4. c. 33. s. 1. Prosecutors are placed in the same situation as defendants with respect to obtaining writs of *certiorari* to remove indictments from inferior courts into the court of King's Bench.

Writ only to be
obtained upon
motion.

Whether at the instance of the prosecutor (except the attorney-general) or of any other person, this writ cannot issue without motion made in court or before a judge, and leave obtained.

Defendants to
enter into
recognizance.

By s. 2. Every defendant who shall obtain a writ of *certiorari*, shall, before the allowance of the writ, enter into recognizance with sureties in such sum as the court, or a judge, shall, by indorsement on the writ, direct; the recognizance to contain the conditions prescribed by 5 W. & M. c. 11. and 8 & 9 W. 3. c. 33.

Writ must be
applied for
within six
months.

Page 211. § 12.—By the 13 G. 2. c. 18. s. 5. A *certiorari* to remove a conviction, &c. before a justice must be applied for within six calendar months, and the time is to be reckoned without regard to delays in drawing up a case, or any such cause; and if this were not so held the statute would in effect be repealed. The court has no power of extending indulgence to a party who, from whatever cause, is behind the proper time. *R. v. Bloxam*, 1 A. & E. 386.

Notice by
another
person.

Page 211. § 14.—Where a person gives a notice of application for a *certiorari*, in pursuance of 13 G. 2. c. 18. s. 5. that will not enable any other person to issue the writ, although the party giving the notice avowedly abandons the proceedings to prevent the orders being brought up to be quashed, and although it is too late to give a fresh notice. *R. v. Js. of Kent*, 3 B. & Ad. 250.

What notice
not sufficient.

Notice to a justice of intention to move for a *certiorari* "on the first day of next Hilary term, or as soon after as I can be heard," was served on the first day of that term, although the rule was not moved for until the expiration of six days: the court held (*Denman, Ld. C. J. dis.*) that the notice was insufficient. *Ex parte Flounders*, 4 B. & Ad. 865.

Computation of
time.

The six days' notice of application for a *certiorari* must be reckoned exclusively of one day, and inclusively of the rest. And this is the general rule of practice in the crown office of the court of King's Bench, as to the computation of any number of days' notice, where there is no express regulation to the contrary. *R. v. Good-enough and others*, 2 A. & E. 463.

V. *Effect of the Writ.*—Page 213.

Upon an appeal to the quarter-sessions against a conviction, the conviction was quashed subject to a case reserved for the opinion of the court of King's Bench, and the court sent back the case to be re-stated. The sessions then proceeded to re-hear the case and receive further evidence, and made a new order confirming the conviction, subject to a case. It was held that the *certiorari*, by which the original order was removed, did not operate to remove the subsequent order. And the party, wishing to contest such order, must obtain a *certiorari* and remove it. *R. v. Bloxam*, 1 A. & E. 386.

VII. *Costs.*

Page 217. § 9.—Where the prosecutor of an indictment has removed it by *certiorari*, and there is no irregularity in the proceedings, the court of King's Bench cannot upon any representation of hardship imposed upon the defendant, oblige the prosecutor to pay him his costs incurred in the court below. *R. v. Passman and others*, 1 A. & E. 603. 2 Dow, P. C. 529. S. C.

Where prosecutor not liable.

Where a prosecutor, having removed an indictment by *certiorari*, gives notice of trial for the assizes, and after bringing down the record withdraws it on the day of trial; the court of King's Bench will, on motion, grant a rule to compel the prosecutor to pay the defendant the costs of the day. But it seems that the judge at *nisi prius* has not power to make such an order. *R. v. Watton*, 4 C. & P. 229. *Bolland, B.*

Where prosecutor liable.

Page 217. § 10.—Rated inhabitants of a parish prosecuting rioters who prevented them from attending a vestry meeting, are entitled to costs. *R. v. Thompkins, Lyall, and others*, 2 B. & Ad. 287.

What party prosecuting entitled to costs.

In order to entitle prosecutors to costs, under the 5 W. & M. c. 11. s. 3. after the removal of an indictment by *certiorari*, they must show not only that they are the prosecutors, but also that they are parties grieved. Therefore, where the expenses of a prosecution had been defrayed by a public subscription, it was held that, in such a case, the prosecutors were not parties grieved, within the meaning of the statute. *R. v. Cook*, 1 Man. & Ry. 526.

What party prosecuting not entitled to costs.

A person who is merely a nominal prosecutor, although a party libelled, (the prosecution being really carried on by others in his name) is not "the party grieved or injured" within the meaning of 5 W. & M. c. 11. s. 3. *R. v. Dewhurst*, 5 B. & Ad. 405, and see also *R. v. Edwards*, 5 B. & Ad. 407. n. (a).

Champertry.

Page 222. § 9.

An agreement between the seller and purchaser of an estate,—that the purchaser, bearing the expense of certain suits previously commenced by the seller against an occupier for arrears of rent, should have the rent to be so recovered, and any sum that could be recovered for dilapidations,—and that the purchaser might also (bearing the expenses) use the seller's name, in any action he might

What is not.

think fit to commence against the occupier, for arrears of rent or dilapidations,—is not void, as savouring of *champerty*. For there is no *champerty* in an agreement, to enable the *bond fide* purchaser of an estate to recover for rent due, or injuries done to it, previously to the purchase. *Williams v. Protheroe*, 5 Bing. 309.

What is.

But where a party covenanted to use his best exertions and influence to procure evidence, whereby A. B. would be enabled to recover a large sum of money, in consideration of A. B. paying to him one-eighth share of the sum so recovered; this was held clearly to amount to the offence of *champerty*; for it was a contract for the purchase of an interest in a law-suit, by the party having stipulated,—not indeed to pay money for such interest, but to do what was still more calculated to prevent the fair and impartial administration of justice,—namely, to procure evidence to support the litigated claim of A. B. *Stanley v. Jones*, 7 Bing. 369.

Cheats.

II. Under 7 & 8 Geo. 4. c. 29.

Unstamped order.

Page 229. § 2.—An unstamped order upon a banker for the payment of money (2*l.*) which ought to be stamped, under 55 G. 3. c. 184. is not a *valuable security* within the 7 & 8 G. 4. c. 29. s. 53; because it would be a breach of the law in the banker to pay it, and he would have subjected himself to the penalty of 50*l.* by paying it. *R. v. Yates*, Ry. & M. C. C. 170.

Obtaining credit.

Page 231. § 15.—Merely *obtaining credit* in account from the party's own banker, by drawing a bill on a person on whom the party has no right to draw,—though it has no chance of being paid,—is not within the 7 & 8 G. 4. c. 29. s. 53; notwithstanding the banker afterwards pays money for the party upon the faith of such bill, to an extent which he would not otherwise have done. *R. v. Wavell*, Ry. & M. C. C. 224.

By a forged order, felony. Evidence.

§ 18.—If a person obtains goods by means of a forged order, this is an uttering a forged order and a felony within 11 G. 4. & 1 W. 4. c. 66. s. 10; and such person cannot be indicted for the misdemeanor of obtaining the goods by means of a false pretence, under 7 & 8 G. 4. c. 29. s. 53. *R. v. Evans*, 5 C. & P. 553. *Taunton, J.*

IV. Indictment, Evidence, &c—Page. 233.

Indictment.

An indictment, for obtaining goods under false pretences, which stated that the prisoner “unlawfully, knowingly, and designedly, did *feloniously* pretend,” &c.; was held bad, and the prisoner was therefore acquitted. *R. v. Walker*, C. C. C. 6 C. & P. 657.

Where a false pretence was contained in a false letter, which had been lost before the trial, parol evidence was admitted of the contents of the letter. *R. v. Chadwick*, 6 C. & P. 181. *Tindal, C. J.*

Where a prisoner was indicted, under 7 & 8 G. 4. c. 29. s. 53. for obtaining money under false pretences, the defence set up was that the prosecutor had conspired with others to entrap the prisoner into the commission of the offence; but it was held that this was no

Chelsea Hospital.

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answer to the charge. *R. v. Joseph Adey, 7 C. & P.*
son and Vaughan, Js.

Patte-

Chelsea Hospital.

By 7 G. 4. c. 16. The several acts relating to *Chelsea Hospital* 7 G. 4. c. 16.
are consolidated.

By *section 16*. Justices of the peace, and other public officers, Perjury.
may inquire into the truth of any certificate, &c. on oath; and persons swearing falsely are to be guilty of perjury.

By *section 25*. If any person shall by the sending or production of any false certificate or any altered certificate or discharge, instructions or other document, knowing the same to have been fraudulently altered, or by making any false representation, obtain or endeavour to obtain for himself or any other person from the commissioners of the said hospital at *Chelsea*, any pension or increase of pension or other allowance of money, or any enrolment or other privilege or advantage; such persons to be deemed guilty of a misdemeanor and punished accordingly, and for ever forfeit all claim to any pension, &c.

By *section 27*. The secretary and four senior clerks of the hospital may administer certain oaths; and parties swearing falsely are by *section 28*. made guilty of perjury.

By *section 33*. If any agent or clerk, employed in paying the pensions, shall take or exact any fee or reward whatsoever for paying the same; he forfeits his office, and also the sum of 100*l.*, and is incapable of filling any office. Extortion.

By *section 34*. If any pensioner shall unlawfully pawn, sell, embezzle, secrete, or dispose of, or if any pawnbroker or other person shall unlawfully take in pawn, buy, exchange, or receive, any clothes, linen, stores, or other things, marked or stamped, or branded with the words "*Chelsea Hospital*;" or if any pensioner, or other person, shall cause such mark to be obliterated or defaced; or shall knowingly and unlawfully pawn, sell, or dispose of, or shall knowingly take in pawn, buy, exchange, or receive, any clothes, or other articles belonging to the said hospital; or shall secrete, embezzle, or not duly account for them,—whether marked or unmarked,—such articles having been intrusted or delivered to him for any purpose whatsoever;—the offender incurs a penalty not exceeding 20*l.*, on summary conviction before a justice of the peace, on the oath of one witness, to be levied by distress; one moiety to be paid to the informer, and the other to the hospital; and in default of distress, or in case the justice shall consider that the offender is likely to abscond before the penalty can be levied, then he may be committed for three calendar months, or until the penalty shall be paid. Pawning clothes.

By *section 35*. In all indictments and other proceedings for any offences against the act, it shall be sufficient to charge the same as being done, with intent to defraud "the lords and others, commissioners of the Royal Hospital for soldiers at *Chelsea*, in the county of *Middlesex*." Indictments.

By *section 38*. If any person shall willingly and knowingly personate or falsely assume the name or character; or procure any other Personation of pensioners.

Forgery of
documents.

to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person, entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money, or relief due or payable, or supposed to be due or payable for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person as aforesaid in His Majesty's army, or other military service, or shall personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor, of any such officer, non-commissioned officer, or soldier, or other person as aforesaid, in order fraudulently to receive any pension, wages, pay, grant, or other allowance of money, prize money, or relief due or payable, or supposed to be due or payable for or on account of any services done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person as aforesaid; or if any person shall forge or counterfeit or alter, or cause or procure to be forged or counterfeited or altered, or knowingly and willingly act, aid, or assist, in forging, counterfeiting, or altering the name or handwriting of any officer, non-commissioned officer, soldier, or other person, entitled or supposed to be entitled to any pension, wages, pay, grant, allowance of money, prize money, or relief, due or payable or supposed to be due or payable, for or on account of any such service or supposed service as aforesaid, or the name or handwriting of any officer, under officer, clerk, or servant of the said commissioners of the said hospital at *Chelsea*, or of any officer or person in any way concerned in the paying or ordering, directing or causing the payment of the said pensions, wages, pay, money, allowance of money, prize money, or relief, or any of them; or shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited, or altered, or knowingly and willingly act, aid, or assist, in forging, counterfeiting, or altering, any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever, relating to or any-wise concerning the payment or obtaining or claiming any pension, wages, pay, grant, allowance of money, prize money, or relief, for and in order to the receiving, obtaining, or claiming, any such pension, wages, pay, grant, allowance of money, prize money, or relief, or shall utter or publish as true, or knowingly and willingly act, aid, or assist in uttering or publishing as true, knowing the same to be forged, counterfeited, or altered, any such letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever, with intent to obtain the payment of any such pension, wages, pay, money, or allowance of money, prize money, or relief from the said commissioners of the said hospital at *Chelsea*, or from any officer, under officer, clerk, or servant of the said commissioners, or from the person authorized or supposed to be authorized, to pay the same, or with intent to defraud any person whatsoever, or any corporation whatsoever; every person so offending shall be guilty of felony, and shall be transported for life, or for such term of years as the court shall adjudge.

Knowingly uttering
forgeries.

Felony.
Punishment.

Children.

Page 235. § 2.

The presumption of law is, that a child under fourteen years of age has not sufficient capacity to know right from wrong. Therefore, where a child under that age is indicted for felony, he ought not to be convicted, unless there be evidence to satisfy the jury, that at the time of committing the offence he had a guilty knowledge that he was doing wrong. *R. v. Owen*, 4 C. & P. 230.

Criminal liability.

The stat. 3 & 4 W. 4. c. 103. amended by 4 & 5 W. 4. c. 1. has been passed for the protection of children working in mills and factories, and the regulation of their hours of labour, &c.

By sections 1, 2, and 6. Persons under 18 years of age are not to work at night; that is, between eight o'clock in the evening and half-past five o'clock in the morning, in any cotton, woollen, worsted, hemp, flax, tow, linen, or silk mill or factory, wherein steam or water or any other mechanical power is used to propel the machinery; nor to work more than twelve hours a-day, nor more than sixty-nine hours a week, and they are to be allowed at least an hour and a half for meals.

Hours of working under 18 years of age.

By sections 3, 4, and 5. In case of loss of time by accident, the number of working hours may be increased but not more than an hour a day.

Lost time may be made up.

By section 7. The employment of children under 9 years of age is prohibited.

Children under nine years not to be employed.

By section 8. Thirty months after the passing of the act, children under 13 years of age are not to be employed more than forty-eight hours a week, nor more than nine hours a day, except in silk mills, in which children may work ten hours every day.

Hours of working under 13 years of age.

By section 9. Certain holidays are to be allowed.

Holidays to be allowed.

By sections 10, 11, 12, 13, 14, 15, and 16. Children employed in one mill less than nine hours are not to be employed in any other mill more than the residue, and they are not to be employed without a certificate of their strength from a physician or surgeon.

By sections 17, 18, 19. Inspectors are to be appointed to enforce the observance of the act, and they are to have concurrent powers with justices of the peace, in levying penalties, &c.

Inspectors to be appointed.

By sections 20 and 21. Children under 13 years of age to attend school, and schools are to be provided.

Children under 13 to attend school.

Penalties are imposed upon parents, factory owners, their agents, and servants for the violation of the act, and an appeal to the quarter sessions is given in certain cases.

See *ante*, Apprentices, as to children apprenticed to chimney sweepers.

Cinque Ports.

See the 1 & 2 G. 4. c. 76. for preventing frauds and depredations by boatmen and others within the jurisdiction of the *cinque*

ports, and for regulating the right to salvage; in which act, by *section 18.*, the boundaries of the jurisdiction of the Lord Warden are defined with great particularity.

Cutting away
or defacing
buoy-ropes, &c.
felony.

By *section 6.* If any person or persons shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any buoy, buoy-rope, or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, within the jurisdiction (of the cinque ports), with intent thereby to defraud or injure any person or persons whatsoever or body corporate, he shall be guilty of felony, and transported not exceeding fourteen years.

Anchors, &c.
found within
jurisdiction, to
be deposited at
public places of
deposit, or the
persons having
them in posses-
sion to be
deemed guilty of
receiving stolen
goods.

By *sect. 7.* All anchors, cables, buoys, ropes, or other ships' stores or materials, or any goods, or merchandises of any sort or description whatever, which may have been parted with, cut from or left by any ship or vessel in the *Downs*, or elsewhere within the jurisdiction aforesaid, whether the same shall be in distress, or otherwise, and which shall have been weighed, swept for or taken possession of by any pilots, boatmen, hovellers, or other person, or persons, shall be by them delivered either at *Ramsgate, Deal, or Dover, Harwich, Brightlersea, or Wivenhoe*,—six public places of deposit declared by this act for the reception of all such articles, or such other places as shall be declared by the lord warden, in the same state in which they are found, to the serjeant, or serjeants of the admiralty of the cinque ports aforesaid, their deputy, or deputies, or such other person as he shall authorize to receive the same;—but if any such articles so found, weighed, swept for, or taken possession of, shall not be so delivered immediately, or duly reported to such serjeant, or serjeants, or their deputies, on the finding thereof, and shall afterwards be discovered in the possession, custody, or power of such pilots, boatmen, hovellers, or other person or persons, he, she, or they shall, on conviction, be adjudged and deemed guilty of receiving goods, knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

Wrecked mer-
chandize and
ships' stores to
be also de-
posited.

And by *sect. 8.* All merchandize, materials of any sort, or marine stores of every description, whether belonging to his majesty, or to any British subjects, or foreigners, which may be preserved from any ship or vessel stranded, deserted by her crew, or wrecked, either on shore, or on the *Goodwin*, or any other sand or shoal, or any part of the mainland, or any port or place within the jurisdiction aforesaid, shall be landed and delivered at one of the six places of deposit, belonging to the lord warden's deputies at *Ramsgate, or Deal, or Dover, Harwich, Brightlersea, or Wivenhoe*, or such other places as shall be declared and appointed by the said lord wardens for that purpose, which ever shall be most convenient or contiguous to the place where the loss occurs;—and that if any person, or persons, who shall have preserved or taken possession of any such merchandize, or marine stores within the jurisdiction aforesaid, shall sell, dispose of, or otherwise make away with the same, or shall in any manner conceal, deface, take out, or obliterate the marks or numbers thereon, or alter the same in any manner, with intent thereby directly or indirectly to prevent the discovery,

Selling or de-
facing works,
felony.

and identity of such articles by the owner or owners thereof, such person or persons shall be deemed and adjudged guilty of felony.

Felony.

By *sect. 10*. If any person or persons within the jurisdiction aforesaid, shall knowingly and with intent to defraud and injure the true owner or owners thereof, purchase or receive any anchors, cables, ropes, or other ship's stores, or materials of any description whatever, or any merchandize or lading which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress, or otherwise, or whether the same shall have been preserved from any wreck within the jurisdiction aforesaid; such person or persons, shall on conviction thereof be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and shall suffer the like punishment as for a misdemeanor at the common law, and be also liable to be transported for seven years, in the discretion of the court before which he, she, or they shall be tried.

Receivers of anchors, &c. with intent to defraud, to be deemed guilty of receiving stolen goods.

Misdemeanor. Punishment.

Clergy, Benefit of.

Page 242.

Benefit of clergy might have been allowed even after sentence of death, and at a subsequent assizes. The mode of allowing it, was to ask the prisoner if he had any thing to say why execution should not be awarded, and he might then have prayed his clergy. *R. v. Armstrong and Burke, R. & M. C. C. 21.*

When allowed.

Clerk of Assize.

Page 245.

A clerk of assize has no lien on the records for the fees. *R. v. Bury, 1 Leach, C. C. 201.*

Clerk of the Peace.

By the Municipal Corporation Reform Act, 5 & 6 W. 4. c. 76. *s. 103*. the council of every borough to which His Majesty shall grant a separate court of quarter sessions of the peace, shall appoint a fit person to be clerk of the peace during his good behaviour.

Boroughs holding sessions.

By *sect. 124*. A table of the fees payable to the clerk of the peace of any borough, shall be settled by the council, subject to the approbation of the Secretary of State, and until such table shall be made, the clerk of the peace for any borough shall take the same fees as the clerk of the peace for the county within or adjoining to which such borough is situated.

Fees.

And by *sect. 102*. The clerk of the peace for any borough cannot be appointed clerk to the justices of such borough.

Coffee Shops.

Penalty for keeping them open at certain times of the night.

By 3 & 4 W. 4. c. 19. s. 23. No shop, room, or place, where ready made coffee, tea, or other liquors are sold or consumed within the city of *London*, or the liberties thereof, the limits of the weekly bills of mortality, or the parishes of *St. Mary-le-bone*, *Paddington*, *St. Pancras*, *Kensington*, and *St. Luke, Chelsea*, shall be kept open after eleven at night during any part of the year, nor open before four in the morning between Lady-day and Michaelmas, or before five in the morning between Michaelmas and Lady-day; and that no shop, room, or place of public resort, where any refreshments or any liquors, not subject to any duties of customs or excise, are consumed within the city of *London*, &c., shall be kept open after the hour of one in the morning, or before the hour of five in the morning; and if any such shop shall be open within those hours, or being shut up, if any person shall during those hours be found therein, except the persons actually dwelling there, or having lawful excuse for being there; or if gaming shall be at any time permitted or suffered therein;—then the master, mistress, waiter, or other person having the care, government, or management of such shop, whether he or she be the real owner or keeper thereof, or not, shall forfeit not exceeding 10*l.*, upon conviction before a justice of the peace, by confession or on the oath of one witness; and in default of payment, the justice may commit him to hard labour for not more than three months, unless the penalty be sooner paid. The penalty is to go, one moiety to the informer, and the other to the Chamberlain of *London*, if the offence is committed in the city,—and if not, then to the receiver under the act. But no such conviction shall exempt the owner, keeper, or manager of such shop, from any penalty or penal consequence for keeping a disorderly house.

Coin.

Page 250.

Repeal of acts. By the 2 and 3 W. 4. c. 34. s. 1. All acts and parts of acts, relating to offences against the King's current coin, and to foreign coin made current here by proclamation, which have been passed by the parliament of *England*, *Great Britain*, and the United Kingdom, and of *Scotland* and *Ireland* respectively, are repealed from and after the 30th day of April 1832, so far as they relate to the United Kingdom, except so far as they repeal other acts, and except as to offences committed on or before the 30th day of April, 1832.

And by sect. 2. The act is to take effect upon and after the 1st day of May, 1832.

The following are the statutes, and parts of statutes, which have been repealed, so far as they relate to this subject;—

Acts repealed. The statutes concerning money commonly cited as 20 *Ed.* 1. st. 4, 5, & 6. and respectively intituled, *Statutum de Moneta*,—*Statutum de Moneta Parvum*,—and *Articuli de Moneta*;—27

Ed. 1. st. 1. intituled Statutum de Falsa Moneta,—9 Ed. 3. st. 2. commonly intituled the Statute of Money,—17 Ed. 3.—18 Ed. 3. st. 1.—25 Ed. 3. st. 5. cc. 2, 12, & 13.—27 Ed. 3. st. 2. c. 14.—3 H. 5. st. 2. cc. 6 & 7.—19 H. 7. c. 5.—5 & 6 E. 6. c. 19.—1 M. st. 2. c. 6.—1 & 2 P. & M. c. 11.—5 Eliz. c. 11.—14 Eliz. c. 3.—18 Eliz. c. 1.—6 & 7 W. 3. c. 17. ss. 2, 4, & 12.—8 & 9 W. 3. c. 26.—9 & 10 W. 3. c. 21.—1 Ann, st. 1. c. 9.—7 Ann, c. 24. s. 4.—7 Ann, c. 25. ss. 1 & 2.—15 G. 2. c. 28.—11 G. 3. c. 40.—13 G. 3. c. 71.—37 G. 3. c. 126. s. 1.—56 G. 3. c. 68. ss. 13 to 16.—3 G. 4. c. 114.—7 G. 4. c. 9.

Of Money or Coin generally.

1. "Lawful money of *England*, either in gold or silver, is of two sorts, viz. the English money coined by the King's authority, or foreign coin by proclamation made current within the realm. *Coyne cuna dicitur à cudendo*, of coining money. In French, *coine* signifieth a corner, because in ancient times money was square with corners, as it is in some countries at this day." *Co. Lit.* 207. a.

Lawful money of England.

2. The legitimation of money and the giving it its denominated value, is justly reckoned *inter jura majestatis*, and in *England* it is one special part of the King's prerogative. 1 *Hale*, 188.

Legitimation of money.

3. Money is the common measure of all commerce almost throughout the world; it consists principally of three parts: 1st, The material whereof it is made. 2d, The denomination or extrinsic value. 3d, The impression or stamp. *Ibid.*

Common measure of commerce.

4. The current coin of this kingdom consists properly of gold or silver only. 1 *East, P. C.* 147. 182. 2 *Inst.* 577. *R. v. Cirwan*, 2 *Leach*, 834. n. (a).

Gold or silver only.

5. The coin of *Great Britain* must be made of sterling or standard metal, which, for the *gold coin* at present consists of two carats of copper melted with twenty-two carats of fine gold; and for *silver coin*, of eighteen pennyweights of copper melted with eleven ounces and two pennyweights of fine silver. 1 *Hawk. P. C. bk. 1. c.* 18. s. 16. p. 123.

Must be made of sterling.

6. The weight, alloy, impression, and denomination of money made in this kingdom is regularly settled by indenture, between the King and the Master of the Mint, which has sometimes been followed by a proclamation, as a more solemn manner of giving it currency. But this, in general cases, is certainly not necessary, and in prosecutions for coining need not be proved. 1 *East, P. C.* 149.

Weights, &c. settled by indenture.

7. A proclamation is not always necessary to the legitimation of coin, for there is scarce any king's reign but there are various stamps or impressions of money which are never proclaimed. 1 *Hale, P. C.* 196.

Proclamation not necessary to legitimate English coin.

Although the money or coin of a foreign kingdom, made current here by proclamation, as to all civil respects, is the proper money of the kingdom, yet it was not the *King's money* within the *stat. of treasons*. 1 *Hale*, 210. But it seems that the coin of *Ireland* was within the meaning of that statute. 1 *Hale*, 211.

8. Any coin once legally made and issued by the King's authority continues to be the current coin of the kingdom until recalled, notwithstanding any change in the authority which constituted it. 1 *East, P. C.* 148. 1 *Hale*, 212.

Continues current until recalled.

This recall may be by proclamation; and it has also been effected by Act of Parliament. 1 *East, P. C.* 148, 149.

When proclamation necessary.

9. A proclamation under the Great Seal is required to legitimate base or mixed coin below the standard of sterling; or to enhance the denomination or extrinsic value of a coin already current; or to decry any coin before current. 1 *East, P. C.* 150. 1 *Hale, P. C.* 197.

10. Great doubt has been entertained whether by force of the *stat. 25 Ed. 3. c. 13.* the 9 *H. 5. st. 2. c. 6.* and other acts settling the standard of sterling, the King is not now restrained from altering it by increasing the alloy. 1 *East, P. C.* 148.

Decried coin.

11. It would seem that after coin is decried, it is no longer the King's current coin, nor is it within any of the statutes relating to offences against that coin. And, therefore, it was thought necessary when the broad pieces were decried, by the *stat. 6 G. 2. c. 26.* specially to provide that the counterfeiting of them during that year should be high treason. 1 *East, P. C.* 150.

Foreign coin.

12. Counterfeiting foreign gold and silver coin made current in *England*, was made treason by 1 *M. st. 2. c. 6.*; and by 14 *Eliz. c. 3.* it was made misprision of treason to counterfeit any such coin, although not made current by proclamation. These acts, however, are repealed by the new statute, 2 & 3 *W. 4. c. 34.*

The present law applicable to offences relating to the coin may be conveniently divided into,

I. *Offences relating to the King's Current Gold and Silver Coin.*

- (1.) Counterfeiting gold and silver coin, p. 1537.
- (2.) Colouring pieces of coin or metal, p. 1539.
- (3.) Impairing gold or silver coin, p. 1541.
- (4.) Buying, selling, &c. of counterfeit coin, p. 1542.
- (5.) Importing counterfeit coin, p. 1543.
- (6.) Uttering counterfeit coin, p. 1545.
- (7.) Possession of counterfeit coin, p. 1548.
- (8.) Making, mending, &c. of coining tools, p. 1549.

II. *Offences relating to the King's Current Copper Coin*, p. 1551.

- (1.) Counterfeiting copper coin, p. 1551.
- (2.) Buying, selling, &c. of counterfeit copper coin, p. 1551.
- (3.) Uttering counterfeit copper coin, p. 1552.
- (4.) Possession of counterfeit copper coin, p. 1552.
- (5.) Making, mending, &c. of coining tools, p. 1553.

III. *Offences relating to Foreign Coin*, p. 1553.

1. Foreign coin made current in *England*, p. 1553.
2. Foreign gold and silver coin not made current in *England*, p. 1553.
 - (a) Counterfeiting foreign gold or silver coin, p. 1553.
 - (b) Importing counterfeit foreign gold or silver coin, p. 1554.
 - (c) Uttering counterfeit foreign gold or silver coin, p. 1554.
 - (d) Custody of counterfeit foreign gold or silver coin, p. 1555.
3. Offences relating to foreign copper coin not made current in *England*, p. 1556.
 - (a) Counterfeiting foreign copper coin, p. 1556.
 - (b) Custody of counterfeit foreign copper coin, p. 1556.

IV. *Principals and Accessories*, p. 1556.

V. *Indictment and Venue*, p. 1557.

VI. *Trial*, p. 1560.

VII. *Evidence*, p. 1560.

VIII. *Provisions for the Discovery and Seizure of Counterfeit Coin and Coining Tools, and for the disposal of them*, p. 1565.

I. Offences relating to the King's Current Gold and Silver Coin.

By *sect. 21.* of the 2 & 3 W. 4. c. 34. where "the king's current gold or silver coin" shall be mentioned in that act, the same shall include and denote any gold or silver coin, coined in any of his Majesty's mints, and current in any part of his Majesty's dominions, whether within the United Kingdom or otherwise.

Meaning of
"current gold
or silver coin."

(1.) Counterfeiting the King's Current Gold and Silver Coin.

1. Counterfeiting the king's coin is high treason by the common law, 3 *Inst.* 16, 138.

Treason at
common law.

2. By *sect. 3.* of the 2 & 3 W. 4. c. 34. "If any person shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the king's current gold or silver coin," every such offender shall be guilty of felony, and being convicted thereof shall be liable to be transported for life, or not less than seven years, or to be imprisoned for any term not exceeding four years. And by *sect. 19.* the imprisonment may be with or without hard labour, and with or without solitary confinement, for any portion of such imprisonment.

Felony by
statute.

Punishment.

And by the same *section*, "Every such offence shall be deemed to be complete, although the coin so made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected."

Offence com-
plete although
the coin not
finished.

3. The counterfeiting the current coin of the realm, is in truth a species of *crimen falsi* or forgery. 1 *East*, P. C. 158. 1 *Hale*, 77, 222. *Bl. Com.* 88, 89.

Counterfeiting
is forgery.

4. Not only all such as counterfeit the king's coin without his authority, but even such as are employed by him in the mint come within the statutes against counterfeiting coin, if for their own lucre they make the money of baser alloy or lighter than by their indentures they are authorized and bound to do: for they can only justify their coining at all under such an authority, and if they have not pursued that authority it is the same as if they had none. 3 *Inst.* 16, 17. 1 *Hale*, 213. 1 *Hawk. bk.* 1. c. 17. s. 55. 1 *East*, P. C. 166. But it is not every mistake in weight or alloy that will make them guilty, it must be done wilfully, corruptly, and fraudulently. 1 *Hale*, 213. 1 *East*, P. C. 166.

Who may be
guilty.

5. Under the old law it was laid down that there must be an actual counterfeiting, either by the party himself, or by those with whom he conspires: and that a mere attempt to counterfeit, such as preparing the materials, or fashioning the metal was not sufficient. 1 *East*, P. C. 162. 1 *Hale*, P. C. 214. *Clark's case*, *Kel.* 33.

An attempt was
not treason.

6. Although the false making constitutes the crime under the third *sect.* of the late act, and the law presumes an intent which it is unnecessary even to allege in the indictment; yet in this case as in all

What is a
counterfeiting.

other cases of *felony*, the felonious intention is the essence of the crime, and it is submitted that under the present law, evidence of *such an act of making*, &c. and as will *clearly* develope the intent, and show that it was falsely to make, &c. will be sufficient to convict for this offence, however little the progress may be, which the offender has made towards the completion of his purpose.

Offence, when complete.

Under the old law there was always a difficulty, in deciding in what stage of the process the coiner became criminally answerable for this offence, and it was to obviate this difficulty that the present law makes the offence complete although the counterfeiting shall not be finished, or the coin fit to be uttered.

Counterfeiting a matter of fact.

7. Whether there be a counterfeiting or a resembling of the real coin, is a matter of fact of which the jury are to judge upon the evidence before them. 1 *East*, P. C. 163.

Omission of part of figure and inscription not material.

8. It was held in a case of high treason for counterfeiting the signet of the king, that the offender was guilty, although he had omitted the figure of the crown, and several words of the stile, and added others, as it was supposed for the purpose of making a difference between the signet and the counterfeit. *Robinson's case*, 2 *Rol. R.* 50.

Variation to evade the statute.

If there be a lawful coin of this kingdom, and A. doth counterfeit it in a considerable measure, but yet with some small variation in the inscription, effigies, or arms, to the intent thereby to evade the statute, yet this is a counterfeiting of the king's money;—and that intent doth unquestionably appear if he vent it as true. 1 *Hale*, 215.

Resemblance need not be perfect.

Under the old law it was laid down that there must be a resemblance, such as might in circulation ordinarily impose upon the world; but that in order to warrant a conviction, the resemblance need not be perfect. 1 *East*, P. C. 163, 164.

Thus a counterfeiting with some small variation in the inscription, effigies, or arms, done probably with intent to evade the law, is yet within it; and so is the counterfeiting in a different metal, if in appearance it be made to resemble the true coin. *Id.* 164.

The want of an impression immaterial.

9. In a case where the prisoners were indicted for counterfeiting a piece “of false, feigned and counterfeit money, and coin of the likeness and similitude of the good legal and current money and silver coin of this realm, called a shilling,” and in a second count for forging a sixpence; it appeared in evidence, that every implement necessary for coining shillings and sixpences, were found under the floor of the room where the prisoners were apprehended, and one of the prisoners was found at work upon a piece of base metal. Several counterfeit shillings and sixpences were also found in the room and in the prisoners' pockets in a state fit for circulation, but *no impression of any sort or kind* was discernible upon those produced in evidence. The prisoners having been convicted, the case was reserved for the consideration of the judges, who were of opinion, that it was a question of fact, whether the counterfeit monies were of the likeness and similitude of the lawful current silver coin, called a shilling, and the jury having so found it, the want of an impression was immaterial: because from the impression being generally worn out or defaced, it was notorious that the currency of the genuine coin of that denomination was not thereby affected. The counterfeit was perfect therefore for circulation, and possibly might deceive the

Similitude a question of fact.

more readily for having no appearance of an impression : and in the deception the offence consists. *R. v. J. & P. Welsh*, 1 *Leach*, C. C. 364. 1 *East*, P. C. 87. 164.

And where a prisoner was charged with a similar offence at the O. B. S., the court was of opinion that a blank, that is smoothed and made like a piece of legal coin, the impression of which is worn out, and yet suffered to remain in circulation, is sufficiently to the similitude of the current coin of this realm to bring the counterfeiters within the statute : the blanks having some reasonable likeness to that coin which has been defaced by time and yet passes in circulation. *R. v. Samuel Wilson*, 1 *Leach*, C. C. 285.

Smooth blanks resembling worn coin.

It will be observed with respect to the above cases of *R. v. Welsh* and *R. v. Wilson*, that the prisoners *had completed their intention* of making blanks in imitation of worn or defaced coin, which were ready for circulation, and the only question was, whether the counterfeiters were sufficiently imitations of the current coin of the realm.

10. But where it appeared that a prisoner had counterfeited the impression of half a guinea on a piece of gold which was previously hammered, and was not round, nor would pass in the condition it then was. This with many others he delivered to J. G., who carried them away, and what became of them afterwards could not be proved. The case having been reserved for the consideration of the judges, they were of opinion that the crime was incomplete. *R. v. Varley*, 1 *Leach*, C. C. 76. 1 *East*, P. C. 164. 2 *Bl. R.* 682. S. C.

Counterfeiting not finished.

And where it appeared that several pieces of base metal, which the prisoners had cast in moulds, exactly resembled a shilling, and that in these pieces of base metal, there was a small mixture of good silver, which by heating them and then immersing them in aquafortis and water, is drawn out upon the surface of the metal ; but no one piece of base metal was in such a state as to make it passable ; for in order to make such pieces of base metal completely resemble shillings, they must be rubbed, filed, and thrown into aquafortis. This case having been submitted to the judges, they held that the conviction was wrong. *R. v. Harris & Minion*, 1 *Leach*, C. C. 135.

11. One who alters a lawful shilling so as to make it resemble a guinea, may with as much truth and propriety be said to have counterfeited a guinea, as if he had actually fabricated the whole piece from the original state of the metal. In like manner as one who alters the principal sum of a bond, is as much a forger of the bond so altered, as if he had written the whole. *These are kindred offences.* 1 *East*, P. C. 163.

Altering coin.

12. The forging of the king's coin, was high treason without utterance of it. 3 *Inst.* 16. 1 *East*, P. C. 165. A counterfeits the king's money but never vents it : this was a counterfeiting and treason within the statute. 1 *Hale*, 215.

Utterance not necessary.

Those who coin money without the king's authority, are guilty whether they utter it or not. 1 *Hawk. bk. 1. c. 17. s. 55.*

If there be a counterfeiting in fraud of the king, the offence within the respective statutes is complete before any uttering or attempt to utter. 1 *East*, P. C. 165.

(2.) Colouring Pieces of Coin or Metal.

1. By 2 & 3 W. 4. c. 34. s. 4. " If any person shall gild or silver,

Gilding or silvering any coin.

- or shall with any wash or materials capable of producing the colour of gold or silver, wash, colour, or case over any coin whatsoever resembling, or apparently intended to resemble or pass for any of the King's current gold or silver coin :” or,—
- Gilding or sil-
vering pieces
of metal. “ If any person shall gild, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin, resembling, or apparently intended to resemble, or pass for any of the King's current gold or silver coin :” or,—
- Gilding or alter-
ing silver coin. “ If any person shall gild, or shall with any wash or materials capable of producing the colour of gold, wash, colour, or case over any of the King's current silver coin ;—or file, or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold coin :” or,—
- Silvering or
altering copper
coin. “ If any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any of the King's current copper coin ;—or file, or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold or silver coin.”—
- Felony.
Punishment. Every such offender shall be guilty of felony :—punishment transportation for life, or not less than seven years ; or, imprisonment not exceeding four years, such imprisonment (by *sec.* 19.) to be with or without hard labour, and with or without solitary confinement for any portion of such imprisonment.
- Old law. The old law against the offences of colouring, washing, &c. is to be found in 8 & 9 W. 3. c. 26. s. 4 (made perpetual by 7 Ann, c. 25.) and 15 G. 2. c. 28. s. 1. ; which are now repealed.
2. The only cases to be found in our books on the subject of these offences are the two following :—
- What a suffi-
cient colouring. *William C. se* was found guilty on an indictment for traitorously “ colouring with materials producing the colour of silver, a piece of base coin resembling a shilling,” against the statute. The words of the statute under which the indictment was framed were, “ If any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver any coin resembling,” &c. The prisoner was taken in the very act of making counterfeit shillings in the ordinary way, by steeping round blanks composed of brass and silver in aquafortis. None of them were found in a finished state ; but many were taken out of the liquor by those who apprehended the prisoner ; and others had been before taken out by himself and were dry. These exhibited the appearance of lead, and some of them had the impression of a shilling, and by rubbing them a little they would perfectly resemble silver coin, and would readily pass current, but in their then state the jury found that none would pass current. The question therefore was, whether this offence were complete, inasmuch as the colour of silver had not been produced in any of the blanks ? The counsel for the crown argued, that if the colour of silver had been produced it would have been high treason within the stat. 25 Ed. 3. and that the stat. 8 & 9 W. 3. was made to punish the inchoate offence, which before was not punishable, and that offence was complete by dipping the round

blanks in the aquafortis, by which some change of colour had been produced; for, that the words, "producing the colour of silver," were to be restrained to the next antecedent words, "materials," &c. and not to the preceding words "colour," &c. This matter being referred to the judges, there was some difference of opinion amongst them. One judge said, he understood the words "colour," &c. to mean producing on the piece of metal the colour of silver which was not done here; for without rubbing, the money coined would not pass: and another observed, that the word in the statute was "producing" in the present tense, and not materials which would produce; but all the other judges thought the conviction right. They considered that the offence was complete when the piece was coloured, for it was then coloured with materials which produce the colour of silver, and that it was not necessary that the piece so coloured should be current, for the colouring of blanks was an offence within the clause, and it was observed that a contrary construction would prevent any conviction until a wash was discovered which would in the first instance produce a perfect bright shilling or sixpence. 1 *East*, P. C. 165. S. C. 1 *Leach*, C. C. 154. n. (a).

3. And where two prisoners were charged upon a similar indictment, it appeared that the colour of silver was produced by melting a small portion of good silver with a large portion of base metal, and throwing it, after it had been cut into round blanks, into aquafortis, which draws to the surface whatever silver there is in the composition, and it assumes the colour and appearance of real silver. A doubt, therefore, arose, whether this process of extracting the latent silver by the power of the wash, from the body to the surface of the blank, was "colouring with a wash and materials," within the meaning of the statute, or whether the legislature did not intend such a colouring only as is produced by some external application on the surface of the blank. The question having been referred to the judges, they were unanimously of opinion that this process of extracting the latent silver from the body to the surface of the base metal, by the power of aquafortis, is a colouring within the words "materials producing the colour of silver." *R. v. Lavey & Parker*, 1 *Leach*, C. C. 153.

It is not, however, correct to say that the aquafortis extracted the latent silver from the body to the surface of the blank, for the effect of the acid is on the contrary to extract and dissolve the particles of copper out from amongst the particles of silver on the surface of the piece of metal, thus leaving a thin covering of fine silver. Sir *Ed. East*, in his *Pleas of the Crown*, correctly states that "the effect of the aquafortis is to corrode the base metal and leave the silver only on the superficies, and so the copper is coloured or *cased* with silver." S. C. 1 *East*, P. C. 166.

Dipping blanks in aquafortis.

(3.) *Impairing the King's Current Gold or Silver Coin.*

1. By the 2 & 3 W. 4. c. 34. s. 5. "If any person shall impair, diminish, or lighten any of the King's current gold or silver coin, with intent to make the coin so impaired, diminished, or lightened, pass for the King's current gold or silver coin;" every such offender shall be guilty of felony;—punishment, transportation not exceeding fourteen years, nor less than seven years; or imprisonment not exceeding three years, such imprisonment (by sect. 19.) to be with or without

Felony.
Punishment.

hard labour, and with or without solitary confinement for any portion of such imprisonment.

Old law.

2. This also was an offence previous to the passing of the late act, and the old enactments on the subject are to be found in the 25 *Ed.* 3. c. 13. 9 *H.* 5. st. 2. c. 6. 17 *Ed.* 4. c. 1. 5 *Eliz.* c. 11. s. 2. 18 *Eliz.* c. 1. 13 & 14 C. 2. c. 31. 6 & 7 W. 3. c. 17. s. 4. 56 G. 3. c. 68. s. 17. and 59 G. 3. c. 49. s. 12.—all of which are now repealed.

(4.) *Buying, selling, receiving, or putting off; or offering to buy, &c. counterfeit coin at a lower rate than its denomination imports.*

Felony.
Punishment.

1. By the 2 & 3 W. 4. c. 34. s. 6. “If any person shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off any *false or counterfeit coin, resembling, or apparently intended to resemble, or pass for any of the King's current gold or silver coin*, at or for a lower rate or value than the same by its denomination imports, or was coined or counterfeited for;”—every such offender shall be guilty of felony;—punishment, transportation for life, or not less than seven years; or, imprisonment not exceeding four years, such imprisonment (by *sect.* 19.) to be, with or without hard labour, with or without solitary confinement for any portion of such imprisonment.

Coin gilt, &c.
is within *sect.* 6.

And by *sect.* 21. “Any of the king's current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the king's current coin of a higher denomination, shall be deemed and taken to be counterfeit coin within the intent and meaning of those parts of this act, wherein mention is made of “*false or counterfeit coin resembling or apparently intended to resemble or pass for any of the king's current gold or silver coin.*”

Offence when
incomplete.

2. An indictment against a prisoner under 8 & 9 W. 3. c. 26. s. 6. pursuing the words of that statute, alleged “that the prisoner feloniously did put off counterfeit money to E. L.” It appeared that the prisoner had carried a large quantity of such money (shillings) to the house of E. L. which he had agreed to put off to her, and she to receive from him at the rate of twenty-nine shillings for every guinea; and having laid the shillings down on a table, E. L. proceeded to count them out at the rate before-mentioned. She counted out three parcels containing eighty-seven shillings for which she was to pay the prisoner three guineas. But before she had paid him, and while the counterfeit money she had selected lay upon the table, the officers entered the room and apprehended them just as she was about to pay the prisoner the three guineas. This was held not to be a completion of the offence charged, and the prisoner was acquitted. *R. v. Wooldridge, 1 Leach, C. C. 307. S. C. 1 East, P. C. 179.*

This decision, it is apprehended, would still be applicable in case of an indictment under the new act *for putting off merely*, but the above case would clearly come within the meaning of the words “offer to buy, sell, &c.” in *section* 6. of the present statute.

Milled money.

3. The statute of 8 & 9 W. 3. makes use of the words “any counterfeit milled-money,” but the word “milled” is not contained in *section* 6. of the new statute. Under the old statute a prisoner was indicted for “putting off counterfeited milled-money,” at a lower rate, &c. The putting off, &c. was fully proved, but it could not

be proved that the money had any marks of milling upon it. But the judges held, that it was unnecessary that the counterfeit money should appear to have been milled, for considering "milled-money" as one word (as if written with a hyphen), and descriptive of the money then current if the counterfeit money resembled the money, which, if genuine, would have been milled, it was enough. *R. v. James Bunning*, 1 East, P. C. 180. S. C. 2 Leach, C. C. 621. *R. v. Dorington*, and *R. v. Jacobs and Lazarus*, 1 East, P. C. 181. and S. C. 2 Leach, C. C. 621.

Milled money is so called to distinguish it from hammered money, and all the money now current is milled; i. e. passed through a mill or press to make the plate, out of which it is cut of a proper thickness: though, by a vulgar error, it is frequently supposed to mean the marking on the edges, which is properly termed *graining*. 1 East, P. C. 180, 181.

4. There has been no *hammered* money since the reign of Car. 2. 1 East, P. C. 180. n. (a). And by 9 W. 3. c. 2. (not repealed), the currency of all hammered silver coin, after January 1697, was prohibited. Hammered money.

5. The mere vending or uttering of the counterfeit money will not constitute the offence, unless it be done at a lower rate than the coin imports. 1 East, P. C. 180. Uttering not sufficient.

6. Section 21. of the late act does not extend the meaning of the words "*false or counterfeit coin resembling, &c.*," in the above clause, to coloured pieces of silver or copper, or to coloured coarse gold or coarse silver, or to coloured pieces of metal fit to be coined, or to coloured foreign coin; that section seems only to extend the meaning of those words to coloured or altered king's current coin.

Nor does the enactment in section 3. that the offence of *coining* shall be deemed complete although the coin shall not be finished or fit to be uttered, apply to coin bought, sold, or put off within the meaning of section 6.

(6.) *Importing Counterfeit Gold or Silver Coin.*

1. By 2 & 3 W. 4. c. 34. s. 6. "If any person shall import into the United Kingdom, from beyond the seas, *any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the king's current gold or silver coin*, knowing the same to be counterfeit;"—every such offender shall be guilty of felony;—punishment, transportation for life or not less than seven years;—or imprisonment not exceeding four years:—such imprisonment (by sect. 19.) to be with or without hard labour, and with or without solitary confinement for any portion of such imprisonment. Felony.
Punishment.

And by sect. 21. "Any of the king's current coin, which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the king's current coin of a higher denomination, shall be deemed and taken to be counterfeit coin within the intent and meaning of those parts of this act wherein mention is made of "*false or counterfeit coin resembling or apparently intended to resemble or pass for any of the king's current gold or silver coin.*" Coin gilt, &c.
is within sect. 6.

2. At the common law, counterfeiting beyond the sea, seems not to have been such a treason as could be tried here. 1 *Hale, P. C.* 225.

3. The above clause of the act appears to have been framed with the view to prevent persons from avoiding liability to the higher punishments, by *sects.* 3 and 4. imposed upon persons guilty of counterfeiting, &c., which they otherwise might have done, by completing the counterfeiting, &c. in foreign countries, and then importing the counterfeit coin into this country and uttering it.

What counterfeit coin within the section.

4. A party will not, however, be guilty of importing counterfeit coin within the meaning of this clause in all cases where they would be guilty of counterfeiting, &c. within *sects.* 3 and 4. if done in this country. For the enactment in *sect.* 3. that the offence of coining shall be deemed complete, although the coin shall not be finished or fit to be uttered, does not apply to the above clause. Nor does *sect.* 21. extend the meaning of the words "false or counterfeit coin, resembling," &c. in the above clause, to coloured pieces of silver or copper, or coarse gold or coarse silver, or metal fit to be coined, or to coloured *foreign* coin, but to coloured or altered king's current coin only. But persons completing the act of counterfeiting, by coining such pieces of silver, &c. after importation, would be guilty of counterfeiting, under *sect.* 3.

Whether to copper coin.

5. A question may be raised upon the construction of this clause, and of *sect.* 21., whether the words "king's current coin which shall have been gilt, &c." in *sect.* 21. extend the meaning of the above clause to coloured copper coin or not. The words, current coin, only include gold and silver coin, unless there be something in the act to show a contrary intention in the legislature, and as silver coin, although it might be gilt so as to resemble gold coin, could hardly be silvered so as to resemble silver coin, there seems to be good ground for contending, that the legislature did intend to include coloured copper coin. It might also be contended, that *sect.* 21. having previously mentioned "the king's current gold or silver coin," and also "the king's current copper coin," all these three kinds of coin are intended to be included in the subsequent words, "any of the king's current coin."

6. Importing any of the king's gold or silver coin which may have been impaired, diminished, or lightened, within the meaning of *sect.* 5., is no offence within the meaning of this act. Nor is it any offence, within the meaning of this act, to import foreign counterfeit coin.

Old law.

7. By *25 *Ed. 3. c. 2. s. 5.*, it is declared that, "if a man bring false money into this realm, counterfeit to the money of *England*, as the money called *Lushburgh*, or other, like to the said money of *England*, knowing the money to be false, to merchandize or make payment, in deceit of our said Lord the King and his people," he shall be guilty of treason.

Coin must be brought from a foreign nation.

8. Under this statute it has been held ;—first, that the counterfeit money must be brought from a foreign nation, and not from *Ireland*, or other place belonging to or being a member of the crown of *England*; and so it hath been resolved, so wary are the judges

* The 1 & 2 P. & M. c. 11. applies to the importation of counterfeit *foreign* coin only.

to expound this statute concerning treason, and that in its most benign sense; for, although *Ireland* is a distinct kingdom and out of the realm of *England* to some purposes, as to protections and fines levied, &c.: yet to some intent it is accounted as member of or belonging to the crown of this realm. And, therefore, a writ of error is maintainable here in the King's Bench, of a judgment given in the King's Bench in *Ireland*; so as the judges did construe this statute, not to extend to false money brought out of *Ireland*. 3 *Inst.* 18. *S. P.* 1 *Hale, P. C.* 225. 1 *Hawk. P. C. bk.* 1. c. 17. s. 87. p. 106. 1 *East, P. C.* 153.

not from Ireland,

And the like reason holds for the *Isle of Man*, 1 *Hale, P. C.* 255. The same construction must in reason be taken to extend to all the plantations and dominions of *England*; where the same laws are in force, by which the counterfeitor himself is punishable; which is not the case of a counterfeitor of our coin in the dominions of another sovereign; against whom, it must be admitted that this provision (25 *Ed.* 3.) was principally levelled. 1 *East, P. C.* 156.

Isle of Man, or Colonies.

9. Secondly, it was held, that the money so brought must be counterfeited according to the similitude of the money of *England*. 3 *Inst.* 18. 1 *Hale, P. C.* 227. 1 *Hawk. P. C. bk.* 1. c. 17. s. 85. p. 106.

Must resemble English money.

10. Thirdly, an importation *with intent to utter* is sufficient, without any actual uttering. 1 *East, P. C.* 176.

Intent to utter.

11. It has also been held, that the offence is confined to the importer and does not extend to a receiver as second hand. 1 *Hale, P. C.* 227. 1 *East, P. C.* 175. 1 *Russ. C. & M.* 66.

Offence confined to importer;

12. That the bringer of it into this realm, must know it to be counterfeit. 3 *Inst.* 18. 1 *Hale, P. C.* 228. 1 *Hawk. P. C. bk.* 1. c. 17. s. 86. p. 106.—That the importer must be averred and proved to have known that the money was counterfeit. 1 *East, P. C.* 175.

guilty knowledge;

31. And Lord Coke says, that the importer “ must merchandize therewith, or make payment thereof;” 3 *Inst.* 18. But, according to Lord Hale and other writers on the criminal law, it is enough that the importer had the *intent* to merchandize or make payment therewith, though no such merchandize or payment were actually made. 1 *Hale, P. C.* 229. 1 *East, P. C.* 175. 1 *Hawk. P. C. bk.* 1. c. 17. s. 89. p. 106. 1 *Russ. C. & M.* p. 66.

payment necessary.

14. Under *sect.* 6. of the late act, *importing with a guilty knowledge is sufficient*, without any intent to utter or make payment of the coin.

(6.) Uttering counterfeit Gold or Silver Coin.

- (a) Simple Uttering.
- (b) Uttering accompanied with possession.
- (c) Uttering followed by a second uttering.
- (d) Uttering after a previous conviction.

(a) Simple Uttering.

1. At common law if a person uttered money, knowing it to be false, in fraud of any person, he was only liable to be punished as for a cheat and misdemeanor. 1 *Hale, P. C.* 214. 1 *East, P. C.* 179.

At common law.

By stat.

2. By 2 & 3 W. 4. c. 34. s. 7. "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the king's current gold or silver coin, knowing the same to be false or counterfeit," every such offender to be guilty of a misdemeanor, and to be imprisoned for any term not exceeding *one year*, such imprisonment (by s. 19.) to be with or without hard labour, and with or without solitary confinement during all or any portion of such imprisonment.

Misdemeanor.
Punishment.Coin gilt, &c. is
within sect. 7.

And by *sect. 21.* this clause extends to uttering "any of the king's current coin, which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble, or be apparently intended to resemble or pass for any of the king's current coin of a higher denomination."

Ringing the
changes.

3. It has been decided that the words of the statute, 15 G. 2. c. 28. s. 2.—"utter or tender in payment,"—are in the disjunctive, and will therefore apply to an uttering of counterfeit money, though it be not tendered in payment, but passed by the common trick, called *ringing the changes*, as in the following case: The prisoner was indicted for *uttering a counterfeit shilling to J. R.* It appeared that the prosecutor having bargained with the prisoner, a Jew, who was selling fruit about the streets, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to bite it in order to try its goodness, and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another *good shilling*, which he also affected to bite, and then returned another shilling, saying it was not a good one. The prosecutor gave him another good shilling, with which he practised this trick a third time. The shillings returned by the prisoner were all bad. The court held that the words of the statute were sufficient to include this case. The words being expressed in the disjunctive, "utter, or tender in payment," thereby renders the *uttering and tendering in payment* two distinct and independent acts. *R. v. John Franks, 2 Leach, C. C. 644.*

Punishment
for two offences
charged in the
same indictment.

4. Where a prisoner was convicted upon an indictment, charging her in two separate counts with two several offences of uttering, the judges were of opinion that judgment ought only to be given for one single punishment, and not on each of the counts. *R. v. Elizabeth Tandy, 1 East, P. C. 183.*

(b) Uttering, accompanied by possession.

1. By 2 & 3 W. 4. c. 34. s. 7. "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit coin so tendered, uttered, or put off, one or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble, or pass for any of the king's current gold or silver coin," every such person to be guilty of a misdemeanor, and to be imprisoned not exceeding *two years*;

Misdemeanor.
Punishment.

* The words of the previous statute (15 G. 2. c. 28. s. 2) were "utter or tender in payment any false or counterfeit money knowing the same to be so."

such imprisonment (by s. 19.) to be with or without hard labour, and with or without solitary confinement during all or any portion of such imprisonment.

And by *sect. 21.* this clause extends to uttering "any of the king's current coin which shall have been gilt, silvered, washed, or cased over, or in any manner altered, so as to resemble, or be apparently intended to resemble or pass for any of the king's current coin of a higher denomination."

Coin gilt, &c.

(c) Uttering followed by a second uttering.

1. By 2 & 3 W. 4. c. 34. s. 7. "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall, either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the king's current gold or silver coin, knowing the same to be false or counterfeit," every such offender to be guilty of a misdemeanor, and to be imprisoned for any term not exceeding *two years*; such imprisonment (by s. 19.) to be with or without hard labour, and with or without solitary confinement during the whole or any portion of such imprisonment.

Misdemeanor.
Punishment.

And by *sect. 21.* this clause also extends to uttering "any of the king's current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble, or be apparently intended to resemble, or pass for any of the king's current coin of a higher denomination."

Coin gilt, &c.

2. Where, in an indictment upon the 15 G. 2. c. 28., the prisoner was charged in the first count with having uttered on the 15th December, and in the second count with another uttering on the same day, it was held that the indictment was not sufficient to subject the prisoner to the greater punishment inflicted by s. 3. of that statute for uttering two pieces of counterfeit coin on the same day, there being no distinct averment of that fact; and that the two facts of uttering twice on the same day should be united in one count as a single charge. *R. v. Elizabeth Tandy*, 2 Leach, 833. S. C. 1 East, P. C. 182.

Indictment—
the two utterings must be charged in the same count.

3. And the judges were of opinion in that case that judgment ought only to be given for one single imprisonment of six months (under s. 2. of that statute), and not on each of the counts. S. C. 1 East, P. C. 183.

Punishment.

4. Where an indictment (under 15 G. 2. c. 28.) charged that the prisoner on the 14th February uttered to W. C., and (*in the same count*) that the prisoner, on the said 14th February uttered to J. L., it was held that the indictment was good, although it did not allege the second uttering to be "on the same day" as the first. For that on the face of the indictment the utterings appeared to be on the same day; and though, when the day was not material, the fact might be proved on a day different from the day laid, yet, where it is not indifferent, the precise time laid must be proved; and that in this case it must be taken to be proved that the defendant uttered coun-

Indictment—
not necessary to allege that both utterings were "on the same day."

terfeit coin at two different times of the same day. *R. v. Robert Martin*, 1 *East*, P. C. *Ad. XVIII.* 2 *Leach*, 923. 1 *Russ. C. & M.* 83.

(d) Uttering after a previous conviction.

By the 2 & 3 *W. 4. c. 34. s. 7.* *After making the last three mentioned offences misdemeanors*, enacts, that "if any person who shall have been convicted of *any* of the misdemeanors hereinbefore mentioned, shall afterwards commit *any* of the said misdemeanors,"—such person shall be guilty of *felony*, and be transported for life, or not less than seven years, or be imprisoned for any term not exceeding four years; such imprisonment (by *sec. 19.*) to be with or without hard labour, and with or without solitary confinement during all or any portion of such imprisonment.

Felony.

Punishment.

As to evidence of the previous conviction, see *post*, *Coin*, VII. (*Evidence*).

(7.) *Possession of three or more pieces of counterfeit gold or silver coin.*

First offence.

1. By 2 & 3 *W. 4. c. 34. s. 8.* "If any person shall have in his custody or possession, three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same," every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be considered to be imprisoned not exceeding three years.

Misdemeanors.

Punishment.

Second offence.

Felony.

Punishment.

2. And by the same *sect.* "If any person so convicted shall afterwards commit the like misdemeanor, such person shall be deemed guilty of *felony*," and shall be liable to be transported for life, or for not less than seven years, or to be imprisoned not exceeding four years.

Hard labour and solitary confinement.

By *sect. 19.* The court may sentence offenders to imprisonment with or without hard labour, and with or without solitary confinement during all or any portion of the imprisonment to which they may be liable.

Coin gilt, &c.

3. And by *sect. 21.* This *sect. (8.)* extends also to the possession of "any of the king's current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered so as to resemble or be apparently intended to resemble or pass for any of the king's current coin of a higher denomination."

What a sufficient custody or possession.

4. And by the same *sect. (21.)* "where the having any matter in the custody or possession of any person, is in this act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling-house, or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit, or for that of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act."

Possession merely no offence at common law.

5. Before this enactment, merely having the possession of counterfeit coin was held to be no offence, either at common law or otherwise. *R. v. Heath*, *R. & R. C. C.* 184. *S. P. R. v. Charles Stewart*, *Id.* (288.)

6. But procuring counterfeit coin, knowing it to be counterfeit, and with intent to utter it, is a misdemeanor at common law. *R. v. Fuller and Robinson, R. & R. C. C. 308.*

Procuring base coin a misdemeanor.

And the possession of a large quantity of such coin under suspicious circumstances and unaccounted for, is evidence of having procured it with intent to utter it. *Id.*

Possession, evidence of procuring.

But it is otherwise if the circumstances are sufficient to induce a presumption that the person having such possession was the maker of the counterfeit coin. 1 *Russ. C. & M. 47.* And see *R. v. Heath, R. & R. C. C. 184.*

(8.) *Making, mending, or having possession of Tools for counterfeiting Gold or Silver Coin.*

1. By 2 & 3 *W. 4. c. 34. s. 10.* "If any person shall knowingly and without lawful authority (the proof of which authority shall lie on the party accused) make or mend, or begin or proceed to make or mend, or buy or sell, or shall knowingly and without lawful excuse, (the proof of which excuse shall lie on the party accused), have in his custody or possession, any puncheon, counter-puncheon, matrix, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended to make or impress, the figure, stamp, or apparent resemblance of both, or either of the sides of any of the king's current gold or silver coin, or any part or parts of both, or either of such sides:—or if any person shall without lawful authority (the proof whereof shall lie on the party accused) make, or mend, or begin, or proceed to make or mend, or buy, or sell, or shall without lawful excuse, (the proof whereof shall lie on the party accused) have in his custody or possession, any edger, edging tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges, with letters, grainings, or other marks or figures, apparently resembling those on the edges of any of the king's current gold or silver coin, such person knowing the same to be so adapted and intended as aforesaid;—or if any person shall without lawful authority, to be proved as aforesaid, make or mend, or begin or proceed to make or mend, or buy (*printed* by) or sell, or shall without lawful excuse to be proved as aforesaid, have in his custody or possession, any press for coinage, or any cutting engine for cutting by force of a screw, or of any other contrivance, round blanks out of gold, silver, or other metal, such person knowing such press to be a press for coinage, or knowing such engine to have been used, or to be intended to be used, for in order to the counterfeiting of any of the king's current gold or silver coin:—"every such offender to be guilty of felony, and to be transported for life, or not less than seven years, or to be imprisoned not exceeding four years, such imprisonment (by *sect. 19.*) to be with or without hard labour, and with or without solitary confinement during all or any portion of such imprisonment.

Felony.
Punishment.

2. Before this act, it was held in one case, that where a prisoner had a *press* for coinage in his possession, that he was guilty of having a tool or other instrument in his possession within the meaning of 8 & 9 *W. 3. c. 26. s. 1.* *R. v. John Bell, 1 East, P. C. 169.*

Press for coinage.

In that case, the question was, whether the words "tool or other

instrument before mentioned," included "a press for coinage," which had been mentioned in a previous clause of the section.

Mould.

3. In another case it became a question whether a mould (having been mentioned in the previous part of that section) was "a tool or instrument before mentioned," within the meaning of the latter clause of the section, and the judges were unanimously of opinion that it was. *R. v. Hugh Lennard*, 1 East, P. C. 170. 1 Leach, C. C. 90.

All ambiguity is, however, removed from the 10th section of the new act, by repeating the names of every tool, instrument, &c. in each clause of the section.

Instruments
subsequently
invented.

Graining col-
lar.

4. It was held in a late case that the 8 & 9 W. 3. related not merely to instruments in use at the time of passing the act, but also to such as were afterwards invented for producing the same effect. And it was decided therefore, that a collar for graining coin was an instrument within the meaning of that act, although not invented until many years afterwards; the graining at that time having been performed by hand with a tool;—and that although the graining collar was not of itself sufficient to enable a person to perform the operation of graining without the aid of a press. *R. v. Theodore Moore*, R. & M. C. C. 122. and 2 C. & P. 235. S. C.

Puncheon.

5. In another case a prisoner was indicted under the 8 & 9 W. 3. c. 26. for having a puncheon in his possession. It was proved that a puncheon alone, without a counter-puncheon, would not make the figure upon the coin. And it was held that the case was within that statute notwithstanding. It was also held in the same case, that if the instrument impress a resemblance in point of fact, such as will impose on the world, it is sufficient; and the figure need not be exact. And it was also held that a puncheon for making an impression resembling coin; the impression of which was considerably worn, and the letters worn out; was within the meaning of the act. *R. v. Rowland Ridgeley*, 1 East, P. C. 171.

Possession of
coining tools.

6. The possession of coining tools without lawful authority, and with intent to make and utter counterfeit coin, was held in one case to be a misdemeanor at common law. *R. v. Sutton*, 1 East, P. C. 172. 1 Hawk. bk. 1. c. 17. s. 75. p. 103.

"It is said that it is the *intent* with which the person has these instruments in his custody, that creates the *offence*, and therefore it has been determined that a person having in his possession two iron stamps with intent to impress the sceptres on sixpences, and to colour and pass them off for half guineas, is indictable as a misdemeanor at common law." S. C. 1 Hawk. bk. 1. c. 17. s. 83. p. 103.

But this case has since been held to be untenable, on the ground that the having possession of tools, &c. with a guilty knowledge, cannot be considered an *act*; and an *intent* without an *act*, is not a misdemeanor. *R. v. Heath*, 1 R. & R. C. C. 184.

Procuring tools
a misdemeanor
at common law.

7. But *procuring* tools with intent to use them, was clearly a misdemeanor at common law, the *procuring* being an *act* done. *Id. R. v. Fuller and Robinson*, Id. 308; *R. v. Charles Stewart*, Ib. 288.

The misdemeanor is however now merged in the felony created by the above section of the late act, and in an indictment for that felony, it is not necessary now to aver the intention; the possession, &c. without lawful excuse, and with a guilty *knowledge* alone constituting the offence.

II. *Offences relating to the King's Current Copper Coin.*

- (1) Counterfeiting copper coin.
- (2) Buying, selling, putting off, &c. of copper coin at a lower rate than its denomination imports.
- (3) Uttering counterfeit copper coin.
- (4) Possession of three or more pieces of counterfeit copper coin.
- (5) Making, mending, or having the possession of tools for counterfeiting copper coin.

1. By 2 & 3 W. 4. c. 34. s. 21. Where "the king's current copper coin," shall be mentioned in any part of this act, the same shall be deemed to include and denote any copper coin coined in any of his majesty's mints, and lawfully current in any part of his majesty's dominions, whether within the United Kingdom, or otherwise.

What is current copper coin.

2. It is no offence within this act to impair or to import counterfeit copper coin; but semble, that an importer of such coin might be guilty of a misdemeanor at common law in *procuring* such coin with intent to utter it. See *R. v. Fuller and Robinson*, R. & R. C. C. 308.

3. Copper coin is not properly current coin of this kingdom;—current coin of this kingdom, properly consists of gold or silver only. 1 *East*, P. C. 147. 182. 2 *Inst.* 577. *R. v. Cirwan*, 2 *Leach*, 834. n. (a).

(1.) *Counterfeiting the King's Current Copper Coin.*

1. Counterfeiting such coin was, at common law, a misdemeanor only, but the misdemeanor is merged in the felony created by the late act.

Misdemeanor at common law.

2. By 2 & 3 W. 4. c. 34. s. 12. "If any person shall falsely make, or counterfeit any coin resembling, or apparently intended to resemble or pass for any of the King's current copper coin," such offender shall be guilty of felony, and shall be transported not exceeding seven years, or imprisoned not exceeding two years. Such imprisonment (by *sect.* 19.) to be with or without hard labour, and with or without solitary confinement during the whole or any portion of such imprisonment.

Felony by statute.

Punishment.

3. This section does not enact, with respect to this coin, as *sect.* 3. does with respect to gold and silver coin, that the offence shall be deemed to be complete although the coin shall not be finished or perfected, or fit to be uttered, and therefore recourse must be had to the cases decided upon the old law relating to the offence of coining, in order to show what degree of perfection is necessary to bring the offender within this section of the act. These cases are stated, *ante*, *Coin*, I. (1) and although they relate to cases of counterfeiting coin of a higher denomination, the same principle applies to both.

(2.) *Buying, selling, putting off, &c. of counterfeit Copper Coin at a lower rate than its Denomination imports.*

1. By 2 & 3 W. 4. c. 34. s. 12. "If any person shall buy, sell, receive, pay, or put off, any false or counterfeit coin resembling, or ap-

Coin, II. (*Copper Coin.*)

Felony.
Punishment.

parently intended to resemble or pass for any of the King's current copper coin at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for," such offender shall be guilty of felony, and shall be transported not exceeding seven years, or imprisoned not exceeding two years; such imprisonment (by *sect. 19.*) to be with or without hard labour, and with or without solitary confinement, during the whole or any portion of such imprisonment.

2. It will be observed that the above clause of *sect. 12.* does not contain the words "offer to buy, sell," &c. which are inserted in *sect. 6.* (See *ante*, p. 1542.)

(3.) *Uttering Counterfeit Copper Coin.*

Misdemeanor.
Punishment.

1. By 2 & 3 W. 4. c. 34. s. 12. "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for any of the King's current copper coin, knowing the same to be false or counterfeit," such offender shall be guilty of a misdemeanor, and shall be liable to be imprisoned, not exceeding one year, and (by *sect. 19.*) with or without hard labour, and with or without solitary confinement, during the whole or any portion of it.

No offence at
common law.

2. Uttering counterfeit copper coin was no offence at common law. *R. v. Cirwan*, 1 East, P. C. 182. 2 Leach, 834, n. (a) S. C.

3. And previous to the late act, it was not made an offence by any statute. *Id.*

(4.) *Possession of three or more Pieces of Counterfeit Copper Coin.*

Misdemeanor.
Punishment.

1. By 2 & 3 W. 4. c. 34. s. 12. "If any person shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble, or pass for any of the King's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same," such offender shall be guilty of a misdemeanor, and shall be liable to be imprisoned not exceeding one year, and (by *sect. 19.*) with or without hard labour, and with or without solitary confinement during the whole or any portion of it.

What a sufficient
custody or
possession.

2. And by *sect. 21.* "Where the having any matter in the custody or possession of any person is in this act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter, in any dwelling-house or other building, lodging, apartment, field, or other place open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit, or for that of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act."

3. The possession of counterfeit copper coin is now for the first time made punishable as an offence. And this enactment is in precisely the same form as that respecting the possession of counterfeit gold and silver coin; respecting which, see *ante*, p. 1548.

(5.) *Making, mending, or having Possession of Tools for counterfeiting Copper Coin.*

1. By 2 & 3 W. 4. c. 34. s. 12. "If any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused) make or mend, or begin or proceed to make or mend, or buy or sell, or shall knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused) have in his custody or possession any instrument, tool, or engine adapted and intended for the counterfeiting any of the King's current copper coin," such person shall be guilty of felony, and shall be liable to be transported, not exceeding seven years; or to be imprisoned not exceeding two years, such imprisonment (by *sect.* 19.) to be with or without hard labour, and with or without solitary confinement, during the whole or any portion of it.

Felony.
Punishment.

2. And by *sect.* 21. "Where the having any matter in the custody or possession of any person is in this act expressed to be an offence; if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field, or other place open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit, or for that of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act."

What a sufficient custody or possession.

III. *Offences relating to Foreign Coin.*

(1.) All acts against offences relating to *foreign coin made current in England* having been repealed, there is now no statutory provision on the subject.

(2.) *Offences relating to Foreign Gold and Silver Coin not made current in England.*

- (a) Counterfeiting foreign gold or silver coin.
- (b) Importing counterfeit foreign gold or silver coin.
- (c) Uttering counterfeit foreign gold or silver coin.
- (d) Custody of more than five pieces of counterfeit foreign gold or silver coin.

(a) Counterfeiting foreign gold and silver coin not current in *England*.

1. At common law this offence was only punishable as a misdemeanor. 1 *East*, P. C. 160. 1 *Hale*, 210.

Misdemeanor at common law.

2. By 37 G. 3. c. 126. s. 2., reciting that "the practice of counterfeiting foreign gold and silver coin, and the bringing into this realm, and uttering within the same, false and counterfeit foreign gold and silver coin, and particularly pieces of gold coin commonly called *louis d'or*, and pieces of silver coin commonly called *dollars*, hath of late greatly increased; and it is expedient that provision should be made more effectually to prevent the same;" it is enacted that, "if any person or persons shall, from and after the passing of that act, make, coin, or counterfeit any kind of coin not the proper coin

Felony by statute.

of this realm, nor permitted to be current within the same, but resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin," such persons to be guilty of felony, and to be transported for any term not exceeding seven years.

Punishment.

3. By the words *not permitted to be current within the realm*, must be understood, not permitted to be current by proclamation under the great seal. 1 *East*, P. C. 161. And, according to Lord *Hale*, "this consent cannot be but under the great seal:—viz. by proclamation, and a writ under the great seal annexed thereunto, or some other sufficient notification under the great seal." 1 *Hale*, P. C. 210.

(b) Importing counterfeit foreign gold and silver coin not current in *England*.

By 37 G. 3. c. 126. s. 3. "If any person or persons shall, from and after the passing of this act, bring into this realm any such false or counterfeit coin as aforesaid, resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, knowing the same to be false or counterfeit to the intent to utter the same within this realm, or within any dominions of the same," every such person shall be guilty of felony, and may be transported for any term not exceeding seven years.

Felony.

Punishment.

(c) Uttering counterfeit foreign gold and silver coin not current in *England*.

First offence.

1. By 37 G. 3. c. 126. s. 4. "If any person or persons shall, from and after the passing of this act, utter or tender in payment, or give in exchange, or pay or put off to any person or persons any such false or counterfeit coin as aforesaid, resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, knowing the same to be false or counterfeit, and shall be thereof convicted," every person so offending shall suffer six months imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months.

Penalty.

Second offence.

2. And by the same section, "If the same person shall afterwards be convicted a second time for the like offence, of uttering or tendering in payment or giving in exchange, or paying or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, such person shall, for such second offence, suffer two years' imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years."

Punishment.

Third offence.

3. And by the same section, "If the same person shall afterwards offend a third time in uttering or tendering in payment, or giving in exchange, or paying or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, and shall be convicted of such third offence, he or she shall be adjudged to be guilty of *felony without benefit of clergy*."

Felony.

Punishment.

Punishment of death repealed.

4. The 11 G. 4. and 1 W. 4. c. 66. s. 1. after reciting, that

several offences relating to forged writings, and to *other forged and counterfeit matters*, were, by several statutes, punishable with death; enacts that, where by any acts then in force, any person falsely making, forging, *counterfeiting*, erasing, or altering *any matter whatsoever*, or uttering, publishing, offering, disposing of, putting away, or making use of *any matter whatsoever*, knowing the same to be falsely made, forged, counterfeited, erased, or altered, would, according to the provisions contained in any of the said acts, be guilty of felony, and liable to suffer death as a felon; and if any person should, after the commencement of that act, be convicted of any such felony, or of aiding, abetting, counselling, or procuring the commission thereof, such person should not suffer death, (unless the same should be made punishable with death by that act,) but should be liable to be transported for life, or for not less than seven years, or to be imprisoned not exceeding four years, nor less than two years, such imprisonment (by *sect. 26.*) to be with or without hard labour, and with or without solitary confinement, during the whole or any portion of it.

It is also provided by *sect. 1.*, That nothing therein contained shall affect or alter any acts relating to the coin of *this realm*, or to any coin of any other realm, *lawfully current within this realm.*

The 11 G. 4. & 1 W. 4. c. 66. has not imposed the punishment of death for any offence relating to coin, and as foreign coin, *not current here*, is not within the meaning of the proviso, it seems that persons convicted under the 37 G. 3. c. 126. s. 4. of a *third* offence of uttering, would not be now punishable with death, but with the lesser punishment enacted by the 11 G. 4. & 1 W. 4. c. 66. s. 1.

As to the evidence of a former conviction for this offence. See *post*, Coin, VII. (*Evidence.*)

(d) Custody of *more* than five pieces of counterfeit foreign gold or silver coin not current in *England*.

By 37 G. 3. c. 126. s. 6. "If any person or persons shall have in his, her, or their custody, without lawful cause, any greater number of pieces than five pieces of false or counterfeit coin, of any kind or kinds, resembling or made with intent to resemble or look like any gold or silver coin or coins of any foreign prince, state, or country, or to pass as such foreign coin, every such person being therefore convicted upon the oath of one or more credible witness or witnesses, before one justice of the peace, shall forfeit and lose all such false and counterfeit coin, which shall be cut in pieces, and destroyed by order of such justice, and shall forfeit and pay not exceeding 5*l.* nor less than 40*s.* for every such piece of false or counterfeit coin, which shall be found in his custody: one moiety to the informer, and the other to the poor of the parish where such offence shall be committed;—and in case any such penalty shall not be forthwith paid, the justice may commit the person adjudged to pay the same to the common gaol or house of correction, there to be kept to hard labour for three calendar months, or until such penalty shall be paid.

Forfeiture of coin.

Penalty.

Coin, IV. (*Principal & Accessary.*)

(3.) *Offences relating to Foreign Copper Coin not made Current in England.*

- (a) Counterfeiting foreign copper coin.
- (b) Custody of counterfeit foreign copper coin.

(a) Counterfeiting foreign copper coin.

By 43 G. 3. c. 139. s. 3. "If any person, from and after the passing of this act, shall, within any part of the said united kingdom, make, coin, or counterfeit any kind of coin, not the proper coin of this realm, nor ordered by the royal proclamation of his Majesty, his heirs, or successors, to be deemed and taken as current money of this realm, or any part thereof, but resembling, or made with intent to resemble any copper coin, or any other coin made of any metal, or mixed metals of less value than the silver coin of such foreign prince, state, or country respectively, or to pass as such foreign coin;" then every person so offending shall be guilty of a misdemeanor and breach of the peace, and, being thereof convicted, shall, for the first offence, be imprisoned not exceeding one year, and, for the second offence, be transported for the term of seven years.

Misdemeanor.

Punishment.

Second offence
felony.

Punishment.

As to traversing indictments for this offence. See *post*, Coin, VI. (*Trial.*)

And as to evidence of a former conviction. See *post*, Coin, VII. (*Evidence.*)

(b) Custody of counterfeit foreign copper coin.

By 43 G. 3. c. 139. s. 6. If any person or persons shall have in his, her, or their custody, without lawful excuse, any greater number of pieces than five pieces of false or counterfeit coin of any kind or kinds, resembling, or made with intent to resemble any such copper or other coin as aforesaid; every such person, being thereof convicted upon the oath of one witness, before one justice of the peace, shall forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice, and shall, for every such offence, forfeit and pay not exceeding 40s., nor less than 10s. for every such piece of false or counterfeit coin found in the custody of such person; one moiety to the informer and the other to the poor of the parish where such offence shall be committed; and, in case such penalty shall not be paid, it shall be lawful for such justice to commit the person so adjudged to pay the same penalty to the common gaol or house of correction, to be kept to hard labour for three calendar months, or until such penalty be paid.

Forfeiture of
coin.

Penalty.

IV. *Principals and Accessaries.*

Punishment.

Accessory be-
fore the fact.

After the fact.

1. By 2 & 3 W. 4. c. 34. s. 18. it is enacted "That in the case of every felony punishable under this act, every *principal in the second degree* and every *accessary before the fact* shall be punishable in the same manner as the *principal* in the first degree is by this act punishable;—and every *accessary after the fact* to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and (by *sect. 19.*) with or without hard labour, and with or without solitary confinement, for the whole or any portion of such imprisonment.

2. If A. counterfeits, and by agreement before that counterfeiting, B. is to take off and vend the counterfeit money, B. is an aider and abettor to such counterfeiting. 1 *Hale*, 214. But if B., knowing that A. hath counterfeited money, put off this false money for him after the fact, without any such agreement precedent to the counterfeiting, he seems to be all one with a receiver of him, because he maintains him. *Id.*

Aider and abettor.

Receiver.

3. Under the old law all persons, whether principals in the first or second degree, or accessaries *before* the fact, were equally guilty as principals, because there are no accessaries in high treason, but all are principals. 3 *Inst.* 16. 138. But an accessary after the fact was decided, in one case, not to be guilty of treason. *Coniers' Case*, *Dyer*, 296. a. But much doubt has been expressed whether an accessary after the fact was not also guilty as a principal, and Lord *Coke* strongly inclined to that opinion. 3 *Inst.* 138. and see 1 *East*, P. C. 95. 1 *Russ. C. & M.* 61.

Old law.

4. Under the new act, however, the distinction will obtain between principal and accessary, as in all other cases of felony. See 1 *East*, P. C. 186.

5. Two agree to counterfeit, and one agrees to do it in consequence of that agreement; they are both guilty. One counterfeits and another, by *agreement before hand*, afterwards puts it off, the latter is a *principal*; so if he had put it off *afterwards*, knowing that the other coined it; for that makes him an *aid*; so if he furnished the coiner with tools or materials for coining. 1 *East*, P. C. 186.

6. To cause is to procure or counsel one to forge, &c. To *assent* is to give assent or agreement afterwards to the procurement or counsel of another; to *consent* is to agree at the time of the procurement or counsel, and is in law as a procurer. 3 *Inst.* 169.

To procure, &c.

7. In a case where several persons were indicted for forging bank notes, it appeared that each of them executed separately a distinct part of the forgery,—one of them executed his part in the absence of all the others, and was not present when the forgery was completed by the signature. He was ignorant also that two other persons concerned took any part in the transaction, and *they* were ignorant that *he* performed any part of the forgery. The judges were of opinion, that as each of the prisoners acted in completing some part of the forgery, and in pursuance of the common plan each was a principal in the forgery, and although one of them was not present when the note was completed by the signature, he was equally guilty with the others. *R. v. Bingley and others*, R. & R. C. C. 446.

Several acting in pursuance of a common plan.

8. And in another case it was decided, that if several persons make different parts of a forged instrument, each person is a principal, although he does not know by whom the other parts are to be executed, and although it is finished by one alone in the absence of all the others. It is sufficient if he knows it is to be executed by some body. *R. v. Kirkwood and others*, R. & M. C. C. 304. And see also *R. v. Jonathan Dade and others*, *Id.* 307. S. P.

V. *Indictment and Venue.*

1. The indictment ought with certainty and precision to state the charge in the words of the statute. And, although words which have a co-extensive meaning with those made use of by the legislature would in many cases be sufficient, yet it is always the

safest course, as far as possible, to adopt the identical words of the act creating the offence.

In some cases, however, to use only the precise words of the legislature would make the charge too general, and consequently insufficient. So, in an indictment for counterfeiting (under s. 3. of the late act) it would not be sufficient to state that the false coin resembled a piece "of the king's current gold coin." For a prisoner must be able to know with certainty, from the indictment, the particular act constituting the offence with which he is charged, and the indictment must therefore go on to ascertain the particular kind of gold coin which has been counterfeited.

Names of persons known ought to be mentioned.

2. If the name of a person mentioned in an indictment be known it ought to be stated. Thus, where a prisoner was indicted for putting off ten pieces of counterfeit coin to *divers persons unknown*, *Holt, C. J.* said that the names of the persons ought to be mentioned and be laid severally. The prisoner was, however, tried and convicted. *Anonymous, 1 East, P. C. 180.*

It is most probable that the names of the persons to whom the money was put off in this case could not be ascertained. *1 Russ. C. & M. 81. n. (m).*

And semble from the words of Lord *Holt* that an indictment for uttering base coin to several persons would not be supported by proof of uttering some of the base coin to each of them; the uttering to each person being a distinct and separate offence, the offences ought to be laid severally.

See the case of *R. v. Robinson, Holt, N. P. C. 595*, stated *ante, Evidence IV. p. 455.*

Two offences on the same day.

Charged in separate counts.

3. Where a prisoner was charged, in two separate counts of an indictment, with two several offences of uttering base coin, although the day the offence was laid to be committed upon was the same in each count, the judges held that the indictment was not sufficient to subject the prisoner to the larger penalty (under the 15 G. 2. c. 28. s. 3.) as for uttering two pieces of coin on the same day, *there being no distinct averment of that fact.* *R. v. Elizabeth Tandy, 1 East, P. C. 182.*

Both averments must be in the same count.

For to warrant the greater punishment inflicted by the third section of that statute, the two facts of uttering twice on the same day should be united in one count as a single charge. *S. C. 2 Leach, 833. R. v. James Smith, 2 Leach, 856. S. P.*

Two offences charged in the same count on the same day.

But where two several utterings were charged in the same count, on a day named, the day was held to be material, and the fact of uttering twice on the same day to be sufficiently averred. In this case the count of the indictment charged that the prisoner on the 14th February uttered base coin to W. C. and that on the said 14th February he uttered to J. L. The judges held the count sufficient to warrant the greater punishment imposed by the third section, for that on the face of it the utterings appeared to be on the same day, and though, when the day was not material, the fact might be proved on a day different from the day laid, yet, when it was not indifferent, the precise time laid must be proved; and that in this case it must be taken that it was proved that the defendant uttered counterfeit coin at two different times of the same day. *R. v. Robert Martin, 2 Leach, C. C. 923. 1 East, P. C. Add. XVIII. 1 Russ. C. & M. 83.*

4. Where a party is indicted for a second offence, after a previous conviction, the indictment must set out the previous conviction and judgment, with a *prout patet per recordam*. Thus, where an indictment on 15 G. 2. c. 28. s. 2., charged the prisoner with feloniously uttering counterfeit coin, after two previous convictions, the indictment set out the conviction and judgment for the *first* offence with a *prout patet per recordam*, and also the conviction and judgment for the *second* offence, but without a *prout patet per recordam* as to it. The prisoner having been found guilty, it was objected, in arrest of judgment that the indictment was defective in not containing a *prout patet per recordam* as to the second offence. The judgment was respited, and two questions were reserved for the opinion of the judges; first, as to the omission of the *prout patet per recordam*; and secondly, if the indictment was defective as for a felony, on account of that omission, whether it could be deemed sufficient to warrant a judgment for the offence, as for a misdemeanor. The judges held that the indictment was bad, for want of a *prout patet per recordam* in the statement of the conviction and judgment for the second offence, and that no judgment could be given for the misdemeanor upon that record; and the judgment was therefore arrested. *R. v. Ann Turner*, R. & M. C. C. 47.

Statement of a previous conviction.

Prout patet per recordam.

5. Where a prisoner was indicted, under 8 & 9 W. 3. c. 26. s. 1. for having in his possession a mould, on which was made and impressed the figure of one side of a shilling, viz. the head side, &c., it became a question—1st. Whether a mould having been mentioned in the previous part of that section, was “a tool or instrument before mentioned,” within the meaning of the latter clause of that section, and the judges decided that it was. 2dly. Whether it ought not to have been laid in the indictment to be a tool or instrument in the words of the act. And the judges were unanimously of opinion that a mould, having been before, in that section, expressly mentioned by name, it need not be averred in the indictment to be such tool or instrument. And, lastly, Whether the indictment properly laid it to be a mould on which was made and impressed the figure, &c. of a shilling; the evidence being of a mould on which the resemblance of a shilling was inverted, and therefore, more properly, an instrument to make or stamp the resemblance of a shilling, than an instrument on which the resemblance was made. Yet the evidence was held by a great majority of the judges to support the indictment, for the stamp of the coin was impressed on it; but they all agreed that the indictment would have been more accurate if it had stated that the prisoner had in his custody a mould that would make the figure of one of the sides of a shilling. *R. v. Hugh Lennard*, 1 East, P. C. 170. 1 Leach, 90. 1 Russ. C. & M. 74. n. (e). S. C.

Tools.
A mould may be described as a mould on which is impressed the figure of a shilling.

6. Where a prisoner was indicted for having “an edger and edging tool, instrument or engine” in his possession, it appeared that the instrument consisted of a collar, which could only be used in conjunction with the screw-press; and it was, therefore, objected that the collar was not of itself properly an edger, edging tool, instrument or engine; but the judges held unanimously that it was an instrument within the meaning of the statute. *R. v. Theodore Moore*, 1 R. & M. C. C. 122. 2 C. & P. 235. S. C.

Edging tool.

7. By the 2 & 3 W. 4. c. 34. s. 15. Where two or more persons, acting in concert in different counties or jurisdictions, shall commit

Venue.

that act wherein mention is made of "false or counterfeit coin resembling, or apparently intended to resemble or pass for any of the King's current gold or silver coin;"—and that where the having any matter in the custody or possession of any person is in that act expressed to be an offence, any person should have any such matter in his personal custody or possession, or should knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter should be so had for his own use or benefit, or for that of another, every such person should be deemed and taken to have such matter in his custody within the meaning of that act.

What shall be a sufficient possession.

3. By *sect. 3.* The offence of *counterfeiting gold or silver coin* shall be deemed to be complete, although the coin counterfeited shall not be in a fit state to be uttered, or the counterfeiting not finished or perfected. *But that provision does not extend to any other offence under the act.*

Counterfeiting sufficient although coin not finished or fit to be uttered.

4. And by *sect. 9.* of the same act it is enacted, that where any person shall have been convicted of any offence against that act, shall afterwards be indicted for any offence against the act committed subsequent to such conviction, a copy of the previous indictment and conviction purporting to be signed and certified as a true copy by the clerk of the court or other officer having the custody of the records of the court when the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous indictment and conviction without proof of the signature or official character of the person appearing to have signed and certified the same. And for every such copy a fee of 6s. and 8d. and no more shall be taken.

Evidence of a previous conviction.

5. By *sect. 5.* of the 37 G. 3. c. 126. (relating to counterfeit foreign coin), "If any person shall be convicted of uttering or tendering any such false or counterfeit coin as aforesaid, and shall afterwards be guilty of the like offence in any other county, city, or place, the clerk of the assize or clerk of the peace for the county, city, or place where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his Majesty's behalf, certify the same by a transcript, in few words, containing the effect and tenor of such conviction, for which certificate two shillings and sixpence, and no more, shall be paid; *and such certificate being produced in court, shall be sufficient proof of such former conviction.*"

Evidence of a former conviction under 37 G. 3. c. 126.

6. By *sect. 5.* of the 43 G. 3. c. 139. (relating to counterfeit foreign copper coin), "If any person be convicted of any offence against that act, and shall afterwards be guilty of the like offence in any other county, city, &c. the clerk of assize, the clerk of the peace, or town-clerk for the county, city, &c. where such former conviction shall have been had, shall, on request, testify the same by a transcript in few words, containing the effect and tenor of such conviction, for which two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court, and the handwriting of the clerk of assize, &c. being proved, shall be sufficient evidence of such former conviction."

Evidence of a former conviction under 43 G. 3. c. 139.

7. If, upon the evidence against any counterfeiter of the King's coin, though it be but of a late coinage or impression, it comes in

Not necessary to give a pro-

any offence against that act, all, or any of the said offenders may be dealt with, indicted, and their offence laid and charged to have been committed in any one of the said counties, in the same manner as if the offence had been actually and wholly committed within such one county or jurisdiction.

See *Indictment*, II. *ante*, p. 645. and *Forgery*, V. (*Indictment*), *ante*, p. 1465.

VI. *Trial.*

Two or more offenders acting in concert in different jurisdictions.

1. By 2 & 3 W. 4. c. 34. s. 15. Where two or more persons acting in concert in different counties or jurisdictions shall commit any offence against that act, all or any of the said offenders may be dealt with, indicted, tried, and punished in any one of the said counties or jurisdictions, in the same manner as if the offence had been actually and wholly committed in such one county or jurisdiction.

Indictments for misdemeanors not to be traversed without shewing cause.

2. By 2 & 3 W. 4. c. 34. s. 16. "No person against whom any bill of indictment shall be found at any assizes or sessions of the peace for any misdemeanor against that act shall be entitled to traverse the same to any subsequent assizes or sessions, but the court before which the bill of indictment shall be returned as found, shall forthwith proceed to try the person against whom the same is found, unless such person, or the prosecutor shall shew good cause to be allowed by the court for the postponement of the trial.

Jurisdiction of the admiralty.

3. And by *sect.* 20. of the same act, Where any offence punishable under that act shall be committed within the jurisdiction of the Admiralty, the same shall be dealt with, inquired of, tried and determined in the same manner as any other offence committed within that jurisdiction.

Indictments under 43 G. 3. c. 139. not to be traversed unless good cause be shewn.

4. By 43 G. 3. c. 139. s. 4. No person against whom any indictment may be found for any offence against that act, shall be entitled to traverse the same to any subsequent assizes or sessions, unless he shew good cause to be allowed by the court why the trial should be postponed.

VII. *Evidence.*

2 & 3 W. 4. c. 34.

Not necessary to prove coin false by the evidence of an officer of the mint.

1. By 2 & 3 W. 4. c. 34. s. 17. it is declared and enacted, that when, upon the trial of any person charged with any offence against that act, it shall be necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any moneyer or other officer of his Majesty's mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.

What coin shall be within the act.

2. And by *sect.* 21. of that act it is declared and enacted, that when the King's current gold or silver coin, or the King's current copper coin should be mentioned in any part of that act, the same should be deemed to include and denote any gold or silver coin, or any copper coin respectively coined in any of his Majesty's mints, and lawfully current in any part of his Majesty's dominions, whether within the United Kingdom or otherwise:—and that any of the King's current coin which should have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble, or be apparently intended to resemble or pass for, any of the King's current coin of a higher denomination, should be deemed and taken to be counterfeit coin within the intent and meaning of those parts of

Coin gilt, &c., or altered, to be deemed counterfeit.

that act wherein mention is made of "false or counterfeit coin resembling, or apparently intended to resemble or pass for any of the King's current gold or silver coin;"—and that where the having any matter in the custody or possession of any person is in that act expressed to be an offence, any person should have any such matter in his personal custody or possession, or should knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter should be so had for his own use or benefit, or for that of another, every such person should be deemed and taken to have such matter in his custody within the meaning of that act.

What shall be a sufficient possession.

3. By *sect. 3.* The offence of *counterfeiting gold or silver coin* shall be deemed to be complete, although the coin counterfeited shall not be in a fit state to be uttered, or the counterfeiting not finished or perfected. *But that provision does not extend to any other offence under the act.*

Counterfeiting sufficient although coin not finished or fit to be uttered.

4. And by *sect. 9.* of the same act it is enacted, that where any person shall have been convicted of any offence against that act, shall afterwards be indicted for any offence against the act committed subsequent to such conviction, a copy of the previous indictment and conviction purporting to be signed and certified as a true copy by the clerk of the court or other officer having the custody of the records of the court when the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous indictment and conviction without proof of the signature or official character of the person appearing to have signed and certified the same. And for every such copy a fee of 6s. and 8d. and no more shall be taken.

Evidence of a previous conviction.

5. By *sect. 5.* of the 37 G. 3. c. 126. (relating to counterfeit foreign coin), "If any person shall be convicted of uttering or tendering any such false or counterfeit coin as aforesaid, and shall afterwards be guilty of the like offence in any other county, city, or place, the clerk of the assize or clerk of the peace for the county, city, or place where such former conviction shall have been had, shall, at the request of the prosecutor, or any other on his Majesty's behalf, certify the same by a transcript, in few words, containing the effect and tenor of such conviction, for which certificate two shillings and sixpence, and no more, shall be paid; *and such certificate being produced in court, shall be sufficient proof of such former conviction.*"

Evidence of a former conviction under 37 G. 3. c. 126.

6. By *sect. 5.* of the 43 G. 3. c. 139. (relating to counterfeit foreign copper coin), "If any person be convicted of any offence against that act, and shall afterwards be guilty of the like offence in any other county, city, &c. the clerk of assize, the clerk of the peace, or town-clerk for the county, city, &c. where such former conviction shall have been had, shall, on request, testify the same by a transcript in few words, containing the effect and tenor of such conviction, for which two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court, and the handwriting of the clerk of assize, &c. being proved, shall be sufficient evidence of such former conviction."

Evidence of a former conviction under 43 G. 3. c. 139.

7. If, upon the evidence against any counterfeiter of the King's coin, though it be but of a late coinage or impression, it comes in

Not necessary to give a pro-

clamation in evidence as to coin of this kingdom.

Usage, reputation, &c., is evidence that coin is of this kingdom.

Proclamation necessary to prove the legitimation of foreign money.

Counterfeiting.

What evidence insufficient to prove an abetting.

Putting off counterfeit coin at a lower rate—a contract, and must be proved as laid.

One contract consisting of several items.

question whether the coin that is counterfeited were the coin of this kingdom it is not necessary to produce a proclamation to prove its legitimation. 1 *Hale, P. C.* 196; 212. 1 *East, P. C.* 149.

8. The question, therefore, whether the coin that is counterfeited be the coin of this kingdom is a question of fact, which, upon evidence of common usage, reputation, &c. may be found to be English coin, though no proclamation of it is extant. 1 *Hale, P. C.* 213. 1 *East, P. C.* 149.

9. But as to foreign coin legitimated here it seems necessary to shew the proclamation, together with the proclamation writ, or a remembrance thereof. 1 *Hale, P. C.* 213. 1 *East, P. C.* 149. And this was expressly required by the statutes of 5 & 18 *Elizabeth*, for impairing or clipping foreign coin. 1 *Hale, P. C.* 213.

10. The false making is seldom proved by direct evidence, except where an accomplice is called as a witness, but is generally proved by such evidence as leads satisfactorily to the conclusion that the prisoner must have committed the offence—as, where the police officers, upon entering the room where the coining has been going on, find the defendant with newly counterfeited coin, and the implements for coining, &c. &c. about him.

11. Proof that a man occasionally visited coiners; that the rattling of money was occasionally heard with them; that he was seen counting something as if it was money when he left them; that in coming to the lodgings just after the apprehension, he endeavoured to escape, and was found to have bad money about him; is not sufficient evidence to implicate him as counselling, procuring, aiding and abetting the *coining*. Thus, where two women were indicted for colouring a shilling and a sixpence, and a man (*Isaacs*) as counselling them, &c.; the evidence against him was, that he visited them once or twice a week; that the rattling of copper money was heard whilst he was with them; that once he was counting something just after he came out; that on going to the room just after the apprehension, he resisted being stopped, and jumped over a wall to escape; and there were then found upon him a bad three shilling piece, five bad shillings, and five bad sixpences; but upon a case reserved, the judges thought the evidence too slight to convict him. *R. v. Isaacs, H. T.* 1813. *MS. Bayley, J.* 1 *Russ. C. & M.* 62.

12. The statement in an indictment of the putting off counterfeit coin at a lower rate than its denomination imports, is to be considered as the averment of a matter of contract, which must be proved as laid. So, where an indictment on the stat. 8 & 9 *W. 3. c.* 26. *s.* 6. for putting off counterfeit money at a lower rate than it imported, stated that five counterfeit shillings were paid and put off for two shillings. The proof was, that the five bad shillings were sold for half a crown. *Thompson, C. B. and Heath, J.* held that as this was a contract, it must be correctly proved as laid, and directed an acquittal for the variance. *R. v. Joyce, Carr. Supp.* 184.

But where the indictment charged the prisoner with putting off a counterfeit sovereign, and three counterfeit shillings for the sum of five shillings: and the witness gave the following evidence, the prisoner said, "I should have a *cooter*, (a bad sovereign) at four shillings and three *pegs*, (bad shillings) at one shilling, and on his giving them to me, I paid for them with two good half crowns."

It was held by *Vaughan, B.* that this was all one contract, and one transaction consisting of two items, and that the evidence was sufficient. *R. v. Henry Hedges*, 3 C. & P. 410.

13. As to what is a sufficient putting off. See the case of *R. v. Woolridge*, *ante*, p. 1542.

14. Upon an indictment for *simple* uttering, it is necessary to prove the prisoner's guilty knowledge. And as the intention does not appear from the transaction itself, it must be proved from other facts and circumstances.

Uttering—
evidence of a
guilty know-
ledge.

15. For this purpose, the prosecutor may give evidence of the conduct and demeanor of the prisoner on other occasions, and from his conduct on one occasion the jury may infer his knowledge in another. *R. v. Wylie*, 1 N. R. 92. *S. C. nom. R. v. Whyley and Haines*, 2 Leach, C. C. 983.

Conduct and
demeanor of
prisoner on
other occasions.

Without the exception of other evidence than that which the mere circumstances of the transaction itself would furnish, it would be impossible to ascertain whether a defendant uttered with a *guilty knowledge*, or whether he uttered under circumstances which showed his mind to be free from that guilt. *Id.*

16. So evidence may be given of other utterings by the prisoner about the same time. And such utterings afford strong evidence of the knowledge of the prisoner that the money he uttered was bad. *Id.* 1 *Russ. C. & M.* 85.

Other utterings.

17. So, if a man utter a bad shilling, and fifty other bad shillings are found upon him, this may be given in evidence to show that he uttered the money with a knowledge of its being bad. *Id.*

Possession of
other counter-
feit coins.

18. The more detached the *previous* utterings are in point of time, the less relation they will bear to the particular uttering stated in the indictment, and when they are so distant, the only question that can be made, is, whether they are sufficient to warrant the jury in making any inference from them as to the *guilty knowledge* of the prisoner: but it would not render the evidence inadmissible. *R. v. Wylie*, *supra*.

When previous
utterings dis-
tant.

19. The indictment in the above case was for uttering a forged promissary note, but the principle, as well as the practice, is the same with respect to both offences. 1 *Russ. C. & M.* 85.

20. *John Harrison* was indicted at the Lancaster Spring assizes, 1834, under 2 & 3 W. 3. c. 34. s. 7. for uttering a counterfeit shilling. The uttering was clearly proved, and in order to prove the guilty knowledge, the prosecutor offered to give evidence of the possession of five counterfeit shillings by the prisoner *four days after the uttering*. It was objected for the prisoner, that although a *previous* possession would have been admissible in evidence, a *subsequent* possession could not, as the subsequent possession might be, and must be taken to be the first offence. *Taunton, J.* after conferring with *Alderson, J.* overruled the objection, and admitted the evidence. *R. v. John Harrison*, *MS.* The prisoner was not however convicted.

Subsequent
possession of
base coin.

21. A man and woman were indicted under 15 G. 2. c. 28. s. 3. for uttering a counterfeit shilling, knowing it to be counterfeit, and having about them in their custody at the same time another counterfeit shilling, knowing the same to be counterfeit. It appeared in evidence, that the prisoners went together to a public house and slept there. The woman went out alone and uttered the counterfeit shilling, and the man went out also alone, and offered to sell (at another place)

Uttering, ac-
companied by
possession of
base coin.

a large quantity of counterfeit shillings. On the following day the constables found the prisoners in bed. Near the bed was found a quantity of bad half-pence, some silver (four shillings and sixpence) in the man's pocket, which was good, and one shilling and sixpence bad; and concealed under his arm, was found a paper parcel of bad shillings, which, if good, would have been worth 14*l*. In the woman's pocket were found a good half crown, seven good shillings, and six counterfeit shillings like the counterfeits found in the paper under the man's arm. For the prisoners, it was insisted that there was no ground to convict the man, he not having uttered the shilling in question, nor being present at the time the woman uttered it. And that the woman could only be convicted of uttering the shilling, knowing it to be counterfeit, it not appearing that at the time of uttering it (not having been searched on that day) had any other counterfeit money about her. Both the prisoners having been convicted, the case was reserved for the opinion of the judges, who held the conviction of the woman for the single offence good; but not good for uttering and having about her at the time other money; and as to the conviction of the man, they held it could not be supported. *R. v. Job Else and Sarah Else, R. & R. C. C. 142.*

Uttering by one
and possession
by another.

22. In another case, upon a similar indictment against two prisoners, it was proved that one of the prisoners went into a shop and there purchased a loaf for which she tendered a counterfeit shilling in payment, she was secured, but no more counterfeit money was found on her. The other prisoner who had come with her and was waiting at the shop door, then ran away, but was immediately secured, and fourteen other bad shillings were found on her wrapped in gauze paper, and the whole fifteen were proved to be counterfeit. It was objected that the complete offence was not proved against either of the prisoners; but *Garrow, B.* held that the two prisoners coming to the shop, and one staying outside, they must both be taken to be jointly guilty of uttering: and that it was for the jury to say whether the possession of the remaining pieces of bad money was not joint. And the prisoners were both convicted. *R. v. Skirrit and another, 2 C. & P. 427.*

Not necessary
to shew which
of several coun-
terfeit pieces
was the piece
uttered.

23. In the same case it appeared that the prosecutor, after the prisoners were secured, put the counterfeit shilling uttered into a packet with the fourteen others, and he stated that he could not swear which was the particular piece of money that was uttered, but he was sure that the fifteen pieces of counterfeit coin produced contained the one uttered. It was objected that it was incumbent on the prosecutor to show what identical piece of counterfeit money was uttered, but the learned judge over-ruled the objection. *Id.*

Possession is
evidence of
procuring;

24. Upon an indictment for the common law offence of procuring counterfeit coin with intent to utter it in payment; the possession of counterfeit coin unaccounted for, and without any circumstance to induce a belief that the defendant is the maker; is evidence of procuring. *R. v. Fuller and Robinson, R. & R. C. C. 308.*

but not if the
circumstances
induce a belief
that the person
was the maker.

25. Upon the argument in the last case, *Thompson, C. B.* mentioned a case where he had directed an acquittal, because from certain powder found upon the prisoner, there was a presumption that he was the maker of the coin. *1 Russ. C. & M. 47.*

Not necessary
to prove that

26. Upon an indictment against a prisoner for having a coining tool in his custody, it was held by the judge that it was not necessary

to prove that money was actual made with the instrument in question.
R. v. Ridgeley, 1 East, P. C. 172.

coining tools
have been used.

VIII. *Provisions for the Discovery and Seizure of Counterfeit Coin
and Coining Tools, and for the disposal of them.*

(a) Under the 2 & 3 W. 4. c. 34., relating to offences against
British Coin.

1. By *sect. 14.* "If any person shall find or discover in any place whatever, or in the possession of any person having the same without lawful excuse, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the king's current gold, silver, or copper coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, it shall be lawful for the person so finding or discovering, and he is hereby required to seize the same and to carry the same forthwith before some justice of the peace;—and where it shall be proved, on the oath of a credible witness before any justice of the peace, that there is reasonable cause to suspect that any person has been concerned in counterfeiting the king's current gold, silver, or copper coin, or has in his custody or possession any such counterfeit coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, it shall be lawful for such justice, by warrant under his hand, to cause any place whatsoever, belonging to or in the occupation or under the control of such suspected person, to be searched, either in the day or in the night, and if any such counterfeit coin, or any such instrument, tool, or engine, shall be found in any place so searched, to cause the same to be seized and carried forthwith before the said justice, or some other justice of the peace;—and wherever any such counterfeit coin, or any such instrument, tool, or engine as aforesaid, shall in any case whatever, be seized and carried before a justice of the peace, he shall cause the same to be secured, for the purpose of being produced in evidence against any person who may be prosecuted for any offence against this act;—and all counterfeit coin, and all instruments, tools, and engines adapted and intended for the counterfeiting of coin, after they shall have been produced in evidence, or where they shall have been seized, and shall not be required to be produced in evidence, shall forthwith be delivered up to the officers of his Majesty's mint, or to their solicitor, or to any person authorized by them or him to receive the same."

Any person
may seize coun-
terfeit coin or
tool.

Justices may
grant warrants
to search places
of suspected
persons.

Coin, &c. to be
secured as evi-
dence.

And afterwards
delivered to the
officers of the
Mint.

2. By *sect. 13.* "Where any gold or silver coin shall be tendered to any person, who shall suspect any piece or pieces thereof to be diminished, otherwise than by reasonable wearing, or to be counterfeit, it shall be lawful for such person to cut, break, or deface such piece or pieces;—and if any piece so cut, broken, or defaced shall appear to be diminished, otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful coin, the person cutting, breaking, or defacing the same, is hereby required to receive the same at the rate it was coined for;—and if any dispute shall arise, whether the piece so cut, broken, or defaced be diminished in manner aforesaid, or counter-

Coin suspected
to be diminish-
ed or counter-
feit may be cut
by any person
to whom it is
tendered.

Who to bear
the loss.

Justices may
settle disputes.

Tellers of the
exchequer, &c.,
to cut diminished
or counterfeit
coin.

Limitation and
venue in pro-
ceedings.

Justices may
grant warrants
for searching
suspected
places for
counterfeit
foreign coin,
tools, &c.

Such counter-
feit coin,
tools, and ma-
terials to be
seized and
carried before a
justice, who
shall secure
them for evi-
dence, after
which they are
to be destroyed.

feit, it shall be heard and finally determined in a summary manner by any justice of the peace, who is hereby empowered to examine upon oath as well the parties as any other person, in order to the decision of such dispute,—and the tellers at the receipt of his Majesty's Exchequer, and their deputies and clerks, and the receivers general of every branch of his Majesty's revenue, are hereby required to cut, break, or deface, or cause to be cut, broken, or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of his Majesty's revenue.

And by *sect. 22.* Actions and prosecutions against persons for any thing done in pursuance of the act, are to be tried in the county where the fact was committed—and commenced, within six months after committed and not otherwise.

(b) Under 37 *G. 3. c. 126.*, relating to Foreign Gold and Silver Coin.

By *sect. 7.* “It shall and may be lawful to and for any one justice of the peace, on complaint made before him, upon the oath of one credible person, that there is just cause to suspect that any one or more person or persons is or are, or hath or have been, concerned in making or counterfeiting any such false or counterfeit coin as aforesaid, resembling, or made with intent to resemble or look like, any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, by warrant under the hand of such justice, to cause the dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person or persons, or where any such person or persons shall be suspected to carry on any such making or counterfeiting to be searched for any such false or counterfeit coin, or for tools or implements for coining such false or counterfeit coin, or for materials for making or coining the same; and if any such false or counterfeit coin, or any such tools or instruments, or any such materials for making any such false or counterfeit coin, shall be found in any place so searched, or if any such tools, implements, or materials shall be found in the custody or possession of any person or persons whomsoever, not having the same by some lawful authority, it shall and may be lawful to and for any person or persons whatsoever, discovering the same, to seize, and he and they are hereby authorized and required to seize, such false or counterfeit coin, tools, implements, and materials, and to carry the same forthwith to a justice of the peace of the county, city, or place, where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof, and after such time as any such false or counterfeit coin, or any such tools, implements, or materials, shall have been produced in evidence as aforesaid, as well so much and such parts thereof as shall have been so produced, as every other part thereof so seized and not made use of in evidence shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of some justice of the peace, in case there shall be no such trial, be defaced or destroyed, or otherwise disposed of, as such court or such justice shall direct.”

Combinations.

1567

(c) Under the 43 G. 3. c. 139. relating to Foreign Copper Coin.

By *sect. 7.* It is enacted, that it shall be lawful to and for any one justice of the peace, on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any one or more person or persons is or are, or hath or have been concerned in making or counterfeiting any such false or counterfeited foteign coin as aforesaid, by warrant under the hand of such justice, to cause the dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person or persons, or where any such person or persons shall be suspected to carry on any such making or counterfeiting, to be searched for any such false or counterfeited coin, or for tools or implements for coining such false or counterfeit coin, or for materials for making or coining the same; and if any such false or counterfeit coin, or any such tools or implements, or any such materials for making any such false or counterfeit coin, shall be found in any place so searched, or if any such tools, implements, or materials, shall be found in the custody or possession of any person or persons whomsoever, not having the same by some lawful authority, it shall and may be lawful to and for any person or persons whatsoever, discovering the same, to seize, and he and they are hereby authorized and required to seize such false or counterfeit coin, tools, implements, and materials, and to carry the same forthwith to a justice of the peace of the county, city, town, or place, where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof: and after such time as any such false or counterfeit coin, or any such tools, implements, or materials, shall have been produced in evidence as aforesaid, as well so much and such parts thereof as shall have been so produced, as every part thereof so seized and not made use of in evidence, shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of some justice of the peace in case there shall be no such trial, be defaced or destroyed, or otherwise disposed of as such court or such justice shall direct.

Houses of suspected persons may be searched.

Counterfeit coin, tools, &c., to be seized and carried before a justice, and secured as evidence, and afterwards to be destroyed.

Combinations.

I. Affecting Government. Page 251.

Every person who engages in an association the members of which in consequence of being so, take *any oath not required by law*, is guilty of an offence against the 57 G. 3. c. 19. s. 25. *R. v. Dixon and another*, 6 C. & P. 601. *Bosanquet, J.*

Taking unlawful oaths.

II. Affecting Workmen. Page 253.

A combination of workmen for the purpose of dictating to masters what workmen they shall employ, is an indictable offence. *R. v. Bykerdike, Mo. & Rob.* 179. *Patteson, J.*

Workmen.

Upon an indictment for a combination and conspiracy "to pre-

Evidence.

Conspiracy.

vent the workmen of *J. G.* from continuing to work," &c. it is not necessary to prove that the conspiracy was to prevent *all* the workmen of *J. G.* from continuing to work, it is enough to prove a conspiracy to prevent *any* of them from working. *Id.*

Commitment.

II. Form of Commitment.

Must be in writing.

Page 257. § 1. If a statute authorize a justice to issue his warrant for committing a person, the warrant must be in writing. *Hutchinson v. Lowndes and others*, 4 B. & Ad. 118.

When by panel.

§ 3. And the detention of a person without such written warrant, cannot be justified for any longer time than is necessary for making it out. *Id.*

III. To what Prison.

By borough justices.

By 4 G. 4. c. 64. s. 8. The justices for any district or town, the inhabitants of which shall be contributory to the support of any house of correction in the county, may commit to such house of correction.

Compounding Offences.

Page 268.

Indictment. Subsequent conviction.

The averment in an indictment was, that the defendants compounded a felony, and "did desist and from that time hitherto have desisted from all further prosecution of the said *S. S.*" And it appeared that *after* the alleged compounding, the defendants had *prosecuted the felons to conviction*. Held that the indictment could not be supported. *R. v. Stone and others*, 4 C. & P. 379. *Bonsanquet, J.*

Conies.

Page 271.

Destroying, &c., in the night.

§ 2. Destroying rabbits by night in a rick yard in which they are kept, is not an offence within the meaning of 7 & 8 G. 4. c. 29. s. 30.—But *Patteson, J.* said that if the yard had been used exclusively for rabbits, he should have doubted it. *R. v. Garratt and others*, 6 C. & P. 369. *Patteson, J.*

Conspiracy.

Page 277.

I. To injure the Public.

To exonerate a parish from a burden.

Meeting together and combining to exonerate one parish from the burden of a poor person, and throw it on another, is not an indictable conspiracy. *R. v. Seward and others*, 1 A. & E. 706.

So merely persuading an unmarried man and woman in poor cir-

cumstances to contract matrimony, is not an offence unless it is done by unfair and undue means. *Id.* To marry a pauper.

And although the natural consequences of the marriage of the parties was to subject the husband's parish to a burden, it does not follow that those who procured the marriage were indictable. *Id.*

II. To injure Individuals. Page 277.

Owners of goods have a right to expect at a sale of them by auction, that there will be an open competition from the public. If brokers agree together before a sale by auction, that only one of them shall bid for any article, and that all articles bought by any of them shall be put up to sale amongst themselves at a fair price, and that the difference between the auction price, and the price at the resale, shall be shared amongst them,—they are guilty of a conspiracy. *Levi v. Levi*, 6 C. & P. 239. *Gurney, B.* Sale by auction.

A conspiracy to prevent the workmen of a colliery from continuing to work, is an indictable offence. *R. v. Bykerdike and others*, Mo. & Rob. 179. *Patteson, J.* Workmen.

III. Indictment. Page 279.

In *R. v. Fowle and Elliot*, the indictment charged that the defendants "did unlawfully confederate, combine, and conspire to cheat and defraud the just and lawful creditors of *W. F.*" Lord Tenterden, C. J. said, "this count appears to me to be much too general. It does not state what was intended to be done, or the person to be defrauded. I should be sorry to give effect to so general a count as this. However, I will not stop the case upon this point, for were I to direct an acquittal, and this count should turn out to be good, the defendants might plead *autrefois acquit.*" *R. v. Fowle and Elliot*, 4 C. & P. 592. Too general.

And so an indictment which alleged merely that the defendants conspired "by false, artful, and subtle stratagems and contrivances, as much as in them lay to injure, oppress, aggrieve, and impoverish," the prosecutors, was held bad, and the judgment arrested. *R. v. Biers and another*, 1 A. & E. 327.

And where an indictment after alleging that the prosecutor had obtained a verdict in an action against *H. C.*, and a certificate for execution forthwith, charged merely that the defendants contriving and intending, &c. "did conspire, confederate, and agree together, falsely and fraudulently to cheat, and defraud the prosecutor of the fruits and advantages of the said verdict and certificate in contempt," &c. It was held that the indictment was too general and bad in point of law. *R. v. Richardson and others*, Mo. & Rob. 402.

An indictment for a conspiracy ought to show, either that it was for an unlawful purpose, or to effect a lawful purpose by unlawful means. *R. v. Seward and others*, 1 A. & E. 706. What an indictment must show.

It is unnecessary to allege overt acts if the indictment charge what in-itself is an unlawful conspiracy; but if not, the indictment must show some illegal act done in pursuance of the conspiracy. *Id.* Overt acts.

Persuading a male pauper settled in one parish to marry a female pauper settled in and chargeable to another, is not such an overt act. *Id.*

To allege in an indictment that an unmarried woman in a parish,

Constable.

was with child, is not equivalent to an allegation that she was chargeable to such parish; although by law such persons are to be deemed chargeable. *Id.*

To prevent workmen from working.

Upon an indictment for a conspiracy "to prevent the workmen of J. G. from continuing to work, &c." it is not necessary to prove that the conspiracy was to prevent *all* the workmen of J. G. from continuing to work, it is enough to prove a conspiracy to prevent *any* of them from working. *R. v. Bykerdike and others, Mo. & Rob. 179. Patteson, J.*

To defraud a company.

Page 282. § 11. An indictment for a conspiracy to fabricate false shares in a joint stock company, and sell them as good shares, may be sustained, although such company may not be well constituted. *R. v. Mott, 2 C. & P. 521. Abbott, C. J.*

Constable.

See *tit. Arrest, ante*, p. 1494.

III. Appointment and Punishment for Refusal to Serve.

Evidence of refusal to serve.

Page 288, § 15. An indictment charged that defendant had neglected and refused to take upon himself the office of constable. The proof was, that defendant had refused to take the oath of office. It was held that the refusal to take the oath was *prima facie* evidence of a refusal to take upon himself the execution of the office. And that it was not necessary that the indictment should state that the defendant had refused to take the oath. *R. v. Brain, 3 B. & Ad. 614.*

Special constables may be appointed by justices.

Page 288, § 20. By 1 & 2 W. 4. c. 41. the 1 G. 4. c. 37., is repealed, and by sect. 1. of the former act. Two or more justices upon the oath of any credible witness, that any tumult, riot, or felony has taken place, or may be reasonably apprehended in any place within their jurisdiction, if they shall be of opinion that the ordinary officers are not sufficient, are authorized by precept under their hands, to appoint householders, or other persons (not legally exempt from serving as constable) resident in such place, or in the neighbourhood thereof, to act as special constables for such time as they shall think fit. Such special constables to take the following oath;—

Oath.

"I A. B. do swear that I will and truly serve our sovereign lord the King, in the office of special constable for the parish [or township] of _____, without favour or affection, malice or ill-will, and that I will to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of his Majesty's subjects, and that while I continue to hold the said office, I will to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

So help me God."

Notice to the Secretary of State and Lord Lieutenant.

And whenever it shall be deemed necessary to appoint such special constables, notice thereof, and of the circumstances which have rendered such appointment expedient, shall be forthwith transmitted by the justices to the secretary of state, and the lord lieutenant of the county.

By *sect. 2.* The secretary of state, upon the representation of two justices, may order persons exempt from serving, to be appointed and sworn to serve as special constables for *two months*, notwithstanding such exemption.

Sec. of State may order persons exempt to serve for two months, or to be sworn as constables for three months, in the whole or part of a county.

By *sect. 3.* The secretary of state may direct the lord lieutenant of a county to cause special constables, to be appointed and sworn throughout the whole or any portion of the county, and to direct that no person shall be excused by reason of any exemption. Persons so appointed shall only be called upon to act for three months.

By *sect. 4.* Justices are empowered to make orders and regulations for rendering such special constables more efficient for the preservation of the peace, and are also empowered to remove such special constables for misconduct.

Justices may make regulations.

By *sect. 7. & 8.* Persons appointed refusing to take the oath, or to appear before the justices for that purpose, or refusing to serve, or to obey orders, are to forfeit not exceeding five pounds.

Penalty for refusing to take the oath, &c.

By *sect. 9.* Justices may discontinue the services of special constables, and give notice thereof to the secretary of state and lord lieutenant.

Justices may discontinue their services.

By *sect. 10.* Every special constable, within a week after the expiration of his office, is to deliver up his staff, &c. under a penalty of two pounds.

To deliver up staff of office, &c.

By *sect. 11.* If any person shall assault or resist any constable appointed by virtue of that act, whilst in the execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction before two justices, forfeit not exceeding 20*l.*, or be liable to such other punishment upon conviction, on any indictment or information for such offence as any persons are by law liable to for assaulting any constable in the execution of the duties of his office.

Punishment for assaulting, &c.

By *sect. 13.* Justices may order allowance to special constables out of the county rate.

Allowance.

By *sect. 15.* The prosecution of offences punishable upon summary conviction, by virtue of the act, shall be commenced within two calendar months.

Limitation.

Sect. 18. takes away the *certiorari*.

Certiorari.

By 5 & 6 *W. 4. c. 43.* Persons willing to act as special constables, under the provisions of 1 & 2 *W. 4. c. 41.* may be appointed notwithstanding they are not resident in the place for which they are appointed, nor in the neighbourhood thereof, and are to have the same power, &c. and be subject to the same liabilities, &c. as special constables appointed under 1 & 2 *W. 4. c. 41.*

Persons willing to act may be appointed although not resident.

By the 5 & 6 *W. 4. c. 76. s. 83.* Any two or more of the justices of the peace having jurisdiction within any borough, are authorized, in the month of October in every year, to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable) to act as special constables within such borough whenever they shall be required by the warrant of any of the justices of the peace having jurisdiction within such borough so to act and not otherwise, and every such warrant shall recite that in the opinion of the justice granting the same, the ordinary police force of the borough is insufficient at that time to maintain the peace

Appointment of special constables in boroughs.

of the borough; and every person so appointed a special constable shall take the oath set forth in the act, 1 & 2 W. 4. c. 41. and shall have the powers, and be liable to the duties and penalties thereby enacted, and shall receive 3s. and 6d. out of the borough fund for every day he shall act.

IV. Power. Page 288.

Special constables to act through the whole jurisdiction of the justices appointing them; and may be ordered to act for any adjoining county.

By 1 & 2 W. 4. c. 41. s. 5. Special constables appointed under that act shall, throughout the entire jurisdiction of the justices appointing them, have all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities as any constable duly appointed has within his constableness by common law or by statute.

And by *sect. 6.* Upon the representation of two justices of any adjoining county, the justices, acting for the place where any such special constables are serving, may order such special constables to act in such adjoining county, and they shall have the same powers in such adjoining county as if acting in the place for which they were appointed.

A police officer may enter a public house in which there is a disturbance.

Page 289. § 2.—An inspector of police hearing a disturbance in a public house at one o'clock in the morning, and finding the door open, is justified in entering, and is not guilty of a trespass in so doing. *R. v. Smith and others*, 6 C. & P. 136. *Tindal, C. J.*

Constables and police officers authorized to enter houses licensed for selling beer or spirits.

And by 4 & 5 W. 4. c. 85. s. 7. Constables and officers of police are authorized and empowered to enter into all houses licensed to sell beer or spirituous liquors to be consumed upon the premises, as often as they shall think proper, and if licensed persons or their servants refuse to admit a police officer or constable, such licensed persons forfeit for the first offence not exceeding 5*l.*, and for the second offence may also be disqualified from selling for two years.

V. Indemnity and Protection. Page 292.

When present to prevent a breach of the peace.

If a constable be present when a house is entered by force for the purpose of preventing a breach of the peace, he cannot be convicted of a forcible entry. So, if he were present to apprehend a person against whom he had a warrant in case he should be found in the house. *R. v. Eliza Smyth and others*, 5 C. & P. 201. *Lord Tenterden, C. J.*

And in that case it was held, that what the constable said at the time, as to who he was searching for, was admissible in evidence. *Id.*

Contempt.

Page 297.

Of courts of equity.

By 11 G. 4. & 1 W. 4. c. 36. The law, regarding commitments by courts of equity for contempt, is altered and amended.

Exhibitions before a trial.

Page 300. § 17.—Exhibiting in an assize town models of a woman murdered, as she was found dead, and of the prisoner, who was about to take his trial for the murder,—though highly indecorous, and punishable by indictment,—was yet thought not to amount altogether to a contempt. *R. v. Gilham*, 1 M. & M. 165., *per Littledale J. and Gaselee, J.*

Conviction.

Page 301.

Wherever a power is given by statute to "a justice of the peace" to convict, a conviction by two is good. *R. v. Weale*, 5 C. & P. 135. *Park, J.*

I. General Requisites.

Page 303. § 5.—A conviction, under the 3 & 4 W. 4. c. 55. s. 27., stated that the defendant had refused to deliver up a certificate of registry to his Majesty's officers of customs; and it was held the conviction was bad, for not bringing the offence within the words of that section of the statute, "refuse to deliver up to the proper officers of his Majesty's customs, for the purpose of such ship or vessel as occasion shall require." *R. v. Walsh*, 1 A. & E. 481.

Stating the offence in the words of the statute.

Page 304. § 14.—Where a conviction omitted to state the place where the offence was committed, but the penalty was awarded to the overseers of D. in the said county "where the said offence was committed," it was held sufficient. *R. v. Weale*, 5 C. & P. 135. *Park, J.*

Mode of construction.

Corn.

Page 328.

The penalty in 9 G. 4. c. 60. s. 42. is incurred by not returning a purchase of corn, although such purchase be not made according to the provisions of the statute of frauds. The principal object of the former statute being to ascertain weekly averages, the words "purchase" and "bought" in sect. 27. import bargains actually and *bona fide* made, and not merely contracts, according to the provisions of the statute of frauds. *R. v. Townrow*, 1 B. & Ad. 465.

Not returning a purchase.

Barley is corn or grain within the meaning of 7 & 8 G. 4. c. 30. s. 17. *R. v. Swatkins and others*, 4 C. & P. 548. *Patteson, J.* and *Bosanquet, J.*

Barley is corn within 7 & 8 G. 4. c. 30. s. 17.

Vide Arson, II. ante, p. 1496.

Coroner.

By the 5 & 6 W. 4. c. 76. (for the regulation of Municipal Corporations), sect. 62. The council of every borough in which a separate court of quarter sessions of the peace shall be holden, shall within ten days next, after any vacancy in the office, appoint a fit person not being an alderman or councillor to be coroner of such borough as long as he shall well behave himself in his office of coroner; and every such coroner for every inquisition, which he shall duly take within such borough, shall be entitled to have the sum of 20s., and also the sum of 9d. for every mile exceeding two miles,

Council of burghs having quarter sessions to appoint coroner.

Corporation.

which he shall be compelled to travel from his usual place of abode to take such inquisition; to be paid out of the borough fund by order of the court of quarter sessions for such borough.

Borough
coroners to
make returns
to the Secretary
of State.

By *sect. 63.* On or before the first day of *February* in every year, every coroner appointed in any borough, shall make and transmit to one of his Majesty's principal secretaries of state a return in writing, according to such form as the said secretary of state from time to time shall direct, of all the cases in which he may have been called upon to hold an inquest, touching the cause of death of any person during the year ending on the thirty-first day of *December*, immediately preceding.

County
coroners to act
in boroughs
where no
separate quar-
ter sessions.

By *sect. 64.* In every borough in and for which no separate court of quarter sessions of the peace shall be holden, no person from and after the end of that year (1835) shall take any inquisition which belongs to the office of coroner within such borough, save only the coroner for the county or district in which such borough is situated; and the coroner of such county or district, for every inquisition which he shall duly take within any place or precinct within any such borough, shall be entitled to have such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within such county.

II. Duties and Inquisition.

Name and
description of
coroner.

Page 333. § 13.—If an inquisition states that it has been taken "before *T. G.*, coroner of the Lord Barkley," it is bad for not showing what county, liberty, &c. he was coroner of. *Thomas Dearing's case*, 1 *Cro.* 193.

Names of
jurors.

If an inquisition set out the names of the jurors at full length, it is no objection that they do not subscribe their names also at full length, the usual mode of signature is sufficient. *R. v. Bennett*, 6 *C. & P.* 179. *Gurney, B.*

Corporation.

An Act of Parliament—the 5 & 6 *W. 4. c. 76*—has been passed for the regulation of Municipal Corporations.

Repeal of all
laws, &c., in-
consistent with
the act.

By *sect. 1.* So much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent, then in force relating to the several boroughs named in the schedules (A) and (B), to the act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate, named in the said schedules, or any of them as are inconsistent with, or contrary to the provisions of that act, are repealed.

Corporations to
be styled
mayor, alder-
men, and bur-
gesses of —.

By *sect. 6.* After the first election of councillors under the act in any borough, the body, or reputed body corporate, named in the said schedules, with such borough shall take, and bear the name of the mayor, aldermen, and burgesses of such borough, and by that name shall have perpetual succession, and shall be capable in law, by the council of such borough, to do and suffer all acts which then lawfully they, and their successors respectively, might do and suffer by any name or title of incorporation; and the mayor of each of the said boroughs shall be capable in law to do and suffer all acts which

the chief officer of such borough might then lawfully do and suffer, so far as the same respectively were not altered or annulled by the provisions of that act.

By *sect. 7.* The metes and bounds of certain boroughs shall be the same as the limits thereof, respectively settled and described in the act of 2 & 3 W. 4. c. 64. *for settling and describing the divisions of Counties and the limits of Cities and Boroughs in England and Wales, so far as respects the election of Members to serve in Parliament*; and the metes and bounds of other boroughs shall be and remain the same until such time as parliament shall otherwise direct; provided that no parish, or place, or part of any parish, or place, detached from the main part of such borough, or county of a city, or town corporate, shall, after the passing of that act, be included within any such borough or county, and subject to this provision the metes of every such borough shall include the whole of the liberties of such borough by land and by water.

Boundaries of certain boroughs to be those settled by the 2 & 3 W. 4. c. 64., and of others to remain until altered by Parliament.

By *sect. 8.* Every place and precinct included within the metes and bounds of any borough, and none other shall be part of such borough, for all the purposes of that act; and in those boroughs, which are counties of themselves, shall be part of such county, and of none other; and in every case in which the metes and bounds of any borough or county, under the provisions of that act, do not include any place or precinct which before the passing of that act was part of such borough or county, such place or precinct shall thenceforward be taken to be part of the county wherein such place or precinct is situated, or with which it has the longest common boundary. Provided nevertheless, that every county gaol, house of correction, or lunatic asylum, court of justice, or judges' lodging, which at the time of the passing of this act, was taken to be for any purpose within any county, shall still for all such purposes, be taken to be within such county, any thing therein contained to the contrary notwithstanding.

Every place included within the boundaries and none others to be part of boroughs.

The act then proceeds in several succeeding sections to ascertain and describe the persons entitled to be enrolled as burgesses, the manner of yearly making out and revising the lists of persons entitled to be enrolled as burgesses, and to abolish all exclusive rights of trading.

By *sect. 25.* In every borough shall be elected as therein after mentioned, one fit person to be and be called "the mayor" of such borough, a certain number of fit persons to be and be called the "aldermen" of such borough, and a certain number of other fit persons to be and be called "the councillors" of such borough; and such mayor, aldermen, and councillors, for the time being, shall be and be called the council of such borough.

Mayor, aldermen, and councillors to be chosen in every borough, who, together, shall constitute the council.

The act then proceeds to settle and describe the modes of electing the several borough officers and their respective qualifications, and to define their several powers and duties.

By *sect. 50.* The mayor, aldermen, and councillors, auditors, and assessors, are not to act until they have made a declaration in the following form:—

"I A. B. having been elected mayor, [or alderman, councillor, auditor, or assessor] for the borough of _____, do hereby declare, that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judg-

ment and ability ; [and in the case of the party being qualified by estate say, and I do hereby declare that I am seised or possessed of real or personal estate, or both, [as the case may be,] to the amount of one thousand pounds or five hundred pounds, as the case may require, over and above what will satisfy all my debts.]”

The mayor to be a justice of the peace for the borough, and returning officer at elections of members to serve in Parliament.

By *sect. 57.* The mayor for the time being of every borough, shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he shall cease to be mayor, unless disqualified by bribery, &c. and such mayor shall, during the time of his mayoralty, have precedence in all places within the borough, and in boroughs which return a member or members to serve in parliament, other than the town of *Berwick-upon-Tweed*, and other than cities and towns which are counties of themselves, shall be the returning officer at all such elections ; and in case the mayor shall, at the time when he shall be required to perform the duties of such returning officer, be dead, absent, or otherwise incapable of acting, or in case there shall be no mayor, the council of such borough shall forthwith elect one of the aldermen to be the returning officer for such borough in the place of the mayor being so dead, absent, or otherwise incapable.

By *sect. 58.* The council of boroughs are to appoint town clerks, treasurers, and all other usual and necessary officers.

By *sect. 59.* The treasurer is to pay no money except by order of the council, or by order of the court of sessions of the peace for the borough, or a justice of the peace in discharge of his judicial duty, &c.

Council to have power to make bye laws.

By *sect. 90.* It shall be lawful for the council of any borough to make such bye laws as to them shall seem meet for the good rule and government of the borough, and for prevention and suppression of all such nuisances as are not already punishable in a summary manner by virtue of any act in force throughout such borough, and to appoint by such bye laws such fines as they shall deem necessary for the prevention and suppression of such offences ; provided that no fine so to be appointed shall exceed the sum of five pounds, and that no such bye law shall be made unless at least two-thirds of the whole number of the council shall be present ; provided that no such bye law shall be of any force until the expiration of forty days after the same, or a copy thereof shall have been sent, sealed with the seal of the said borough, to one of his majesty's principal secretaries of state, and shall have been affixed on the outer door of the town hall, or in some other public place within such borough ; and if at any time within the said period of forty days his majesty, with the advice of his privy council, shall disallow the same bye law, or any part thereof, such bye law or the part thereof disallowed shall not come into operation : provided also, that it shall be lawful for his majesty, if he shall think fit, at any time within the said period of forty days, to enlarge the time within such bye law, if disallowed, shall not come into force ; and no such bye law shall in that case come into force until after the expiration of such enlarged time.

As to breaches of bye laws.

By *sect. 91.* All the provisions therein-after contained relative to offences against that act, punishable upon summary conviction, shall be taken to apply to all offences committed in breach of any bye law or regulation made by virtue of that act.

By *sect. 107.* After the first day of *May*, 1836, all powers and

jurisdictions to try treasons, capital felonies, and all other criminal jurisdictions whatsoever granted or confirmed by any law, statute, letters patent, grant, or charter whatsoever to any mayor, bailiff, alderman, recorder, or other corporate or chartered officer, or corporate or chartered justice of the peace whomsoever, in any borough, and all right of any body corporate in any borough, or any of the members thereof, by virtue of any law, statute, letters patent, grant, or charter whatsoever, to elect or nominate any justices to keep the peace in or for any borough, or by any members of any such corporate body to act as such justices of the peace in or for any of the last-named boroughs other than is therein declared, shall cease.

Capital jurisdictions, and all other criminal jurisdictions in boroughs, other than are specified in this act, abolished.

By *sect. 108.* After the passing of that act so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent theretofore granted to any borough or body corporate, whereby such borough, or any place within the precincts or liberties of the same, or such body corporate, or the freemen or inhabitants of the same, claimed to be exempted and released from the jurisdiction and office of the Lord High Admiral of *England*, or of the High Court of the Admiralty of *England*, or whereby any body corporate, or any mayor, bailiff, recorder, steward, or other chartered or corporate officer of any borough had or claimed any thing belonging to the office of admiral, whether or, not to be exercised by virtue of any commission to them or any of them to be directed, is thereby repealed: Provided that nothing in that act contained shall extend to alter or affect the jurisdiction and office of the Lord Warden in his office of admiral of the cinque ports.

Chartered admiralty jurisdictions abolished.

By *sect. 109.* The provisions of the 38 *G. 3. c. 52.* are extended to *Bristol, Chester, Exeter, and Berwick-upon-Tweed*, which last place is to be deemed a county of a town.

Certain exceptions in 38 *G. 3. c. 52.* repealed.

By *sect. 110.* Provides for the trial of offenders before the 1st May, 1836, committed for trial at any court whose jurisdiction is thereby abolished.

By *sect. 7:* the 2 & 3 *W. 4. c. 69.* (intituled, An Act to prevent the Application of Corporate Property to the purposes of Election of Members to serve in Parliament), it is enacted, that any member of a municipal corporation, who shall authorize, direct, or command any payment, transfer, or application thereby forbidden, or who shall assent to or concur or participate in any affirmative, vote, order, or proceeding relating thereto, or shall sign or seal in his individual capacity, or affix the corporate seal to any deed or instrument thereby declared void, shall be guilty of a misdemeanor, and being thereof convicted in the Court of King's Bench, at *Westminster*, shall, in addition to such punishment as the court may award, be for ever disabled to take, hold, or exercise any office in the same corporation.

Members of corporations authorizing payments for election purposes guilty of a misdemeanor.

See further as to corporations under the following titles in this Supplement.—*Constable, Coroner, Costs, County-Rate, Gaol, Jury, Justices, Lighting, Sessions, Sheriff, Watchmen, and Venue.*

Costs.

Page 240.

Boroughs to pay the expenses of prosecutions at the assizes.

By the 5 & 6 W. 4. c. 76. (for the regulation of Municipal Corporations) *sect.* 113., after reciting the 7 G. 4. c. 64. s. 25. it is enacted, that all sums directed to be paid by virtue of the said recited act, in respect of felonies and misdemeanors enumerated in the said recited act, committed or supposed to have been committed in any borough in which a separate court of quarter sessions of the peace shall be holden, shall be paid out of the borough fund of such borough, anything in the said act contained notwithstanding; and the order of the court shall in every such case be directed to the treasurer of such borough instead of the treasurer of the county.

Treasurers of every county to keep an account of the costs of the maintenance, &c., of offenders sent from any borough for trial at the assizes, to be paid out of each borough fund. In cases of difference the accounts to be referred to arbitration as provided in 5 G. 4. c. 85.

By *sect.* 114. The treasurers of counties shall keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes in such county, from any borough in which a separate court of quarter sessions of the peace shall be holden, and shall, not more than twice in every year, send a copy of the said account to and make an order for payment of the same on the council of such borough, and the council of such borough shall forthwith order the same, with all reasonable charges of making and sending such account, to be paid to the treasurer of such county out of the borough fund; and in case any difference shall arise concerning the said account it shall be decided by the arbitration of a barrister, to be named as is provided in the case of differences with respect to the payment of monies under contracts made by authority of 5 G. 4. c. 85. And the powers given by the last mentioned act of contracting with the justices of the peace having the authority or jurisdiction in and over any gaol or house of correction of the county wherein or where such borough is situated, or whereto it is adjacent, for the conveyance, support, and maintenance, in such last-mentioned gaol or house of correction, of prisoners committed thereto from such borough, shall after the first day of May, 1836, be vested in the council of such borough, and for the purpose of making such contracts as aforesaid, the council of such borough shall have power to make the orders required by the said last-mentioned act.

Felony.

Page 340. § 2. Costs are never paid to prisoners charged with felony. *R. v. Crowe*, 4 C. & P. 251. *Littledale, J.*

When, in pursuance of a recognizance, a bill of indictment is preferred and found, costs may be allowed although the defendant is not in custody.

In a case of housebreaking, a prosecutor and his witnesses were bound by recognizance to prosecute and give evidence at the assizes; they attended there and preferred an indictment which was found. The prisoner had by mistake been discharged by proclamation at a previous adjourned quarter sessions, and had absconded. Upon motion for the costs, *Taunton, J.* allowed them, and said, "the usual course where a bill is found and the party is not in custody, is, that no expenses should be allowed until after the party is taken and brought to his trial. I think that as the bill has been preferred and found, I may under the word "*prosecuted*" in G. 4. c. 64. s. 22. order the expenses. But if the witnesses had merely appeared here according to their recognizances, and no bill had been pre-

ferred, I think that I should have had no authority." *R. v. Robey*, 5 C. & P. 552.

A surgeon attending as a witness in a case of manslaughter, can only be allowed the costs for his attendance on the trial. He cannot be allowed any fee or costs for opening the body in pursuance of an order by the coroner. *R. v. Edwin Taylor*, 5 C. & P. 301. *Littledale, J.*

Manslaughter;
post mortem ex-
amination.

Nor can any costs be allowed by a judge at the assizes to witnesses for their attendance before the coroner. *R. v. Rees for murder*, 5 C. & P. 302. *Littledale, J.*

No costs of at-
tendance before
coroner.

Page 242. § 12. When a statute authorizes justices to convict in a penalty, and gives an appeal to the quarter sessions, enabling the court to award costs to the parties appealing, or appealed against. Upon an appeal against a conviction under such a statute, the informer is the party appealed against and liable to costs if the appellant succeed. And in a case where the court of quarter sessions had ordered the informer to pay costs to the appellants, the court of King's Bench granted a *mandamus* to the justices to issue a warrant to levy such costs. *R. v. Hants Js.* 1 B. & Ad. 654.

Quarter
sessions.

Page 343. § 19. Where an indictment for felony is removed by *certiorari* into the court of King's Bench, and is tried upon a record issuing out of that court, the expenses of the prosecution cannot be allowed under the 7 G. 4. c. 64. s. 22. *R. v. Kelsey*, 1 Dow, P. C. 481.

Certiorari.
Felony.

Upon an indictment for a riot, removed by the prosecutor by *certiorari* into the Court of King's Bench, and tried at *nisi prius*, the prosecutor and witnesses are not entitled to costs under the 7 G. 4. c. 64. s. 23. *R. v. Joseph Johnson and others*, Ry. & M. C. C. 173.

Misdemeanor.

An indictment for a nuisance which had been removed into the King's Bench, and made a special jury case, was referred by consent at *nisi prius*. The order of reference stated, that if the arbitrators should be of opinion that the defendant was guilty and the prosecutor entitled to costs, the defendant agreed to pay the costs. The arbitrator did so find. The court of King's Bench held that the prosecutor was not entitled to the costs of the special jury, as the judge had not certified under 6 G. 4. c. 50. s. 34. and the order of reference had not expressly given the arbitrator power to award those costs. It was also held that the general term costs, did not include the costs of the reference and award. *R. v. Moate*, B. & Ad. 235.

Order of refer-
ence—special
jury.

And see *Certiorari*, VII. *ante*, p. 1527.

Cotton Factories.

Page 344.

By the 1 & 2 W. 4. c. 39.—the 59 G. 3. c. 66.—60 G. 3. c. 5.—6 G. 4. c. 63.—10 G. 4. cc. 51 & 63. have been repealed, and provisions are made relating to apprentices and other young persons employed in cotton factories, and cotton mills.

Most of the provisions of the 1 & 2 W. 4. c. 39. are, however, re-enacted by the 3 & 4 W. 4. c. 103. for regulating the labour of children and young persons in mills and factories of the United Kingdom. For which see the title *Children*, *ante*, p. 1531.

Counsel.

Page 344.

- Before justices.** 1. Justices may exercise discretion as to whether they will allow any and what persons to act as advocates in any proceedings before them. *Collier v. Hicks*, 2 B. & Ad. 663.
- Stating confessions.** 2. "The correct practice for the counsel for the prosecution, in a case of felony, is not to state any expressions that are supposed to have been made use of by a prisoner, or the exact words of any supposed confession, but he may state their general effect." Per *Patteson, J.* after conferring with *Bosanquet, J.* in *R. v. Swatkins and others*, 4 C. & P. 548.
- Conversation.** 3. In the case of *R. v. Deering and Atkinson*, for burglary, the counsel for the prosecution was about to state a conversation between a witness and one of the prisoners; this being objected to by the counsel for the prosecution, *Garrow, B.* said, If the counsel for the prosecution thinks fit to open the evidence, I cannot control him. *R. v. Deering and Atkinson*, 5 C. & P. 165. and *S. P. Anon. in note (a)*. 5 C. & P. 166. *Alderson, J.*
- Cannot argue in support of witness' objection to answer a question.** 4. If a witness objects to answer questions on the ground that they may subject him to criminal proceedings, the counsel on the opposite side cannot argue in support of the witness's objection. The privilege is that of the witness not of the party, and therefore counsel have no right to interfere for the purpose of excluding an examination to which, as against their client, there is no objection. *R. v. Adey, Mo. and Rob.* 94. *Lord Tenterden, C. J. Thomas v. Newton, M. & M. S. P.* 48. *Ld. Tenterden, C. J.*
- Invalidity of indictment at nisi prius.** 5. Counsel are not allowed to argue at length at *nisi prius* the invalidity of an indictment, for the purpose of inducing the court to refuse to try it. *R. v. Abrahams, Mo. and Rob.* 7. *Lord Tenterden, C. J.*

County.

Page 345. § 2.

Chester and Wales.

By 11 G. 4. & 1 W. 4. c. 70. ss. 13, 14. The jurisdiction of the courts at Westminster is extended to the county palatine of *Chester* and the several counties in *Wales*, and the jurisdictions hitherto subsisting therein are abolished.

County Gaol.

See Gaol.

County Rate.

Page 346.

By 4 & 5 W. 4. c. 48. s. 1. All business appertaining to the assessment, application, or management of the county stock or

rate, or funds, which justices are authorized to do at general or quarter sessions, shall be done and transacted publicly and in open court.

By *sect. 2.* Two weeks' public notice shall be given in two newspapers of the time of holding the sessions, and also of the day and hour at which the business, relating to the assessment, &c. of the county stock or rate, will commence.

Page 347. § 3.—By *sect. 112.* of the 5 & 6 W. 4. c. 76. (*for the regulation of Municipal Corporations*) after the grant of a separate court of quarter sessions of the peace to any borough, every part of such borough shall be discharged from any rate or assessment for the county in which it is situated.

Boroughs having separate quarter sessions exempted.

And by *sect. 117.* of the same act, the treasurer of every county shall keep a separate account of the receipts and expenditure out of the county rate, for other purposes than the costs of prosecutions, and shall send a copy of the account not more than twice a year to the council of every borough having a separate court of quarter sessions and which, before the passing of the 2 & 3 W. 4. c. 64., was liable to contribute to the county rate, and shall make an order on the council of such borough for the payment of such a proportion of such expenditure, (after deducting sums received in aid, &c.), as would have been chargeable upon such borough if that act had not passed, and which the council shall order to be paid out of the borough fund. Proviso that differences are to be settled as provided by 5 G. 4. c. 85. relating to the building, &c. of gaols.

But such boroughs to contribute towards the county expenditure for purposes other than prosecutions.

See *title Costs, ante, p. 1578.*

Page 347. § 6.—It is no ground of appeal against a county rate, that individuals in one parish are rated in a higher proportion than in another. *R. v. Justices of Westmoreland*, 10 B. & C. 226.

Appeal against a county rate.

Customs.

Page 352.

By 3 & 4 W. 4. c. 50. all the statutes relating to the customs (not repealed by 6 G. 4. c. 105.) are repealed.

This branch of the public revenue is now regulated by the 3 & 4 W. 4. c. 51. for the management of the customs;—c. 52. for the general regulation of the customs;—c. 56. for granting duties of customs;—c. 57. for warehousing goods;—and c. 58. for granting bounties and allowances of customs.

Sect. 39. of 6 G. c. 4. s. 112. is re-enacted by 3 & 4 W. 4. c. 57. s. 41.

Dead Bodies.

See *Anatomy.*

Deaf and Dumb.

Page 354. § 1.

Proceedings on arraignment.

Upon the arraignment of a prisoner, if it is stated that he is deaf and dumb, the proper course of proceeding is to have the indictment read over to him; and if it appears that he does not hear it, and makes no answer to his arraignment, a jury should then be impannelled to try whether he stands mute wilfully, or by the act of God; and if they find the latter, they should be then sworn to try him upon the indictment. It is also proper, on such an occasion, that the evidence of each witness should be taken down in a large hand, and shown to the prisoner, in order that he may either by writing, or through the medium of an interpreter who may understand his signs or sounds, cross-examine the witness before he retires from the box. *R. v. Halton, 1 Ry. & M. N. P. Rep. 78. Lord Gifford.*

Death.

See title **Capital Punishment**, *ante*, page 1512.

Election of Prosecutors.

And see **Obdience**, IV. *post*.

Two indictments for the same offence.

1. A prosecutor cannot maintain two indictments for misdemeanor for the same transaction, but must elect to proceed with one and abandon the other.

Thus, where a bankrupt was indicted for not disclosing his effects under the commission,—for not delivering them over,—and for concealing them,—upon his being called upon to plead, it was objected that he was under recognizances to appear to an indictment which had been found at the previous assizes against him for embezzling, and concealing his effects under the commission, and that the same facts were intended to be adduced against him on this indictment as on the other, and that unless the other indictment was quashed, or otherwise disposed of, he ought not to be compelled to plead to this.

The two indictments were admitted to apply to the same offence, and the only difference between them was, that the second contained counts charging the defendant with not disclosing and not delivering over his effects in addition to the counts charging him with concealment and embezzling. And both indictments were good on the face of them.

Patteson, J. after conferring with *Alderson, J.* said that the proper course would be, as he had no power to quash either indictment, to call upon the prosecutor to abide by the event of this indictment;—that unless he agreed not to proceed further with the first, this should not be proceeded with: that *Mr. Justice Alderson* agreed with him that both the indictments ought not to hang over the de-

pendant. If the prosecutor could *show any prejudice* in proceeding with this now, he would respite the recognizances until the next assizes. *R. v. Britton, Mo. & Rob. 297.*

2. Where several charges are included in an indictment, it is not usual to put the prosecutor to his election *immediately upon the case being opened.* *R. v. Wigglesworth, cor. Alderson J. York Spring Assizes, 1834. MS.*

Several charges in the same indictment.

And *seem* that the reason for putting a prosecutor to his election being that the prisoner may not have his attention divided between two charges, the election ought to be made not merely before the case goes to the jury, as it is sometimes laid down, but, before the prisoner is called on for his defence at the latest.

3. Where an indictment charged a prisoner in several counts, both as a principal, and as an aider and abettor of other men, evidence may be given, of several rapes upon the same woman at the same time by the prisoner and the other men, each assisting the other in turn, without putting the prosecutrix to elect on which count to proceed. *R. v. Folkes and Ludds, R. & M. C. C. 354.*

As principal and as aider.

4. Upon an indictment for larceny, it appeared that the prisoners had taken several things out of the prosecutor's house where they lodged, and pledged them, but whether they were all taken at one or at several times was unknown. And as all of them might have been taken at one time it was held that the prosecutor was not put to his election. *R. v. Hunt and Cockburn, Northumberland Spring Assizes, 1835. Alderson, B. MS. See R. v. Dunn, R. & M. C. C. 148, ante, pp. 462 & 1092.*

When uncertain whether one or more offences have been committed.

5. If a count for robbery and another for an assault with intent to commit a robbery be joined, the prosecutor must elect. *R. v. Gough and others, Mo. & Rob. 71. Park, J.*

Robbery and assault with intent to commit a robbery. Embezzlement.

6. Where an indictment for embezzlement, under 7 & 8 G. 4. c. 29., contains only one count charging the receipt of a gross sum; if it turn out that the money was received in different sums, on different days, the prosecutor must make his election and confine himself to one sum and one day. *R. v. Williams, O. B. S. 6 C. & P. 626.*

See *Same*, and *Indictment, III., post.*

Embezzlement.

I. By persons employed in the Public Service. Page 375.

By 2 & 3 W. 4. c. 4. sect. 1. of 50 G. 3. c. 59., is repealed, except as to offences previously committed; and by s. 1. of the former act it is enacted that "if any person employed in the public service of His Majesty, and entrusted by virtue of such employment with the receipt, custody, management, or controul of any chattel, money, or valuable security, shall embezzle the same or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever except for the public service, every such offender shall be deemed to have stolen the same, and shall, in England and Ireland, be deemed guilty of felony:"—punishment, transportation not exceeding fourteen nor less than seven years, or imprisonment with or without hard labour not exceeding three years.

Embezzling money or securities.

Felony.

Punishment.

What shall be deemed valuable securities.

By *sect. 2*. "Every tally, order, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state, or to any share or interest in any fund of any body corporate, company, or society, or to any deposit in any savings' bank, and every debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money, whether of this kingdom or of any foreign state, and every warrant or order for the delivery or transfer of any goods or valuable thing," shall be deemed a valuable security; and if any such person shall embezzle or fraudulently apply or dispose of any such valuable security he shall be deemed to have stolen the same, and shall be punishable in the same manner as if he had stolen "any chattel of like value with the share, interest, or deposit to which such security may relate, or with the money due on such security or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in such security."

Three acts of embezzlement may be charged in indictment.

Particular coin or security need not be specified.

By *sect. 3*. Any number of distinct acts of embezzlement, not exceeding three, committed within six months, may be included in the same indictment, "and in every such indictment where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be, of money, without specifying any particular coin or valuable security, and such allegation, so far as it regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security, of which such amount was composed, shall not be proved; or, if he shall be proved to have embezzled any piece of coin, or any valuable security, or any portion of the value thereof, although such piece of coin, or valuable security, may have been delivered to him, in order that some part of the value thereof should be returned to the party delivering the same, and although such part shall have been returned accordingly."

Property to be laid in the crown.
Venue.

4. In commitments or indictments, the property in any chattel, money or valuable security may be laid in the King.

5. Every offender may be dealt with, indicted, tried, and punished, either where he shall be apprehended, or where he shall have committed the offence.

II. By Private Agents.

Indictment.

A. placed valuable securities in the hands of B., with a written direction to invest the proceeds in the funds "*in case of any unexpected accident happening to A.*" No accident did happen to A. And B. converted the proceeds to his own use. The indictment alleged that A. placed the securities in B.'s hands, "with an order in writing to invest the proceeds in the government funds," without noticing the condition *in case of accident*; and it was held, that this was a fatal variance. *R. v. White*, 4 C. & P. 46. *Lord Tenterden, C. J.*

Quære, Whether an indictment for the embezzlement could be supported in such case, before any accident had happened to A. ?
Ibid.

See *Larceny, V.*, and *Election of Prosecutor.*

Error.

Page 379.

The jurisdiction of the Court of Exchequer Chamber, constituted by 11 G. 4. and 1 W. 4. c. 70. s. 8. extends to criminal proceedings brought by writ of error from the Court of King's Bench, as well as to civil cases. *R. v. Wright, in error*, 1 A. & E. 434.

Criminal proceedings in exchequer chamber.

Page 380. § 5.—A plaintiff in error cannot be allowed to aver any thing in contradiction to the record. The answer, *in nullo est erratum*, is no admission of the fact assigned for error unless it could lawfully be assigned, and is well assigned in point of form. It is no error that a verdict was not recorded at the time it was given. The practice is to enter a minute of the verdict at the time, and to enter it of record afterwards. A plaintiff in error is not entitled to assign errors both in law and in fact, and if he do so the defendant may demur for the duplicity, but the irregularity is waived by defendant pleading. *R. v. Carlile*, 2 B. & Ad. 362.

Plaintiff cannot contradict the record, &c.

The courts have no power, even by consent, to alter the judgment of a preceding term. Judgment once pronounced can only be vacated after the expiration of the term by writ of error. *R. v. Carlile*, 2 B. & Ad. 971.

No power to alter judgment of preceding term.

Evidence.

I. Of Parol Evidence or Witnesses.

(1.) Evidence of Accomplices.

Page 391. § 7.—Although all persons present at, and sanctioning a prize fight where one of the combatants is killed, are guilty of manslaughter as principals in the second degree, yet they are not such accomplices as require their evidence to be confirmed if they are called as witnesses against other parties charged with the manslaughter. *R. v. James Hargrave*, 5 C. & P. 170. *Patteson, J.*

Persons present at a prize fight.

Where three persons were indicted for larceny, one as a principal, and the two others as accessories; and there was no confirmation of the evidence of an accomplice, as against the principal, and only very slight confirmation, as against the accessories; the jury were directed to acquit the prisoners. *R. v. Wells*, 1 M. & M. 326. *Littledale, J.*

It is not usual to convict upon the evidence of one accomplice without confirmation, and it makes no difference where there are more than one. *R. v. Noakes*, 5 C. & P. 326. *O. B. S.*

Where more than one accomplice.

"The corroboration of an accomplice ought to be as to some fact or facts, the truth or falsehood of which go to prove or disprove the offence charged against the prisoner." *Patteson, J.* in *R. v. Addis*, 6 C. & P. 388.

The confirmation must be as to a material fact.

In a case where the prisoners were charged with breaking into and stealing in a warehouse, an accomplice stated that when the robbery was committed the thieves took a ladder from the premises of Mr. P. In confirmation Mr. P.'s servant proved that Mr. P.'s ladder was taken away on the night on which the felony was committed. It was held

Evidence, I. (*Examination of Witnesses.*)

that this was not a sufficient confirmation. *R. v. Webb and another*, 6 C. & P. 595. *Williams, J.*

Evidence of wife.

The evidence of the wife of an accomplice is not a sufficient confirmation of the accomplice's evidence. *R. v. Neal and Taylor*, 7 C. & P. *Park, J.*

Jury may convict upon the unconfirmed testimony of an accomplice.

In a recent case it was held that the jury might, if they pleased, act upon the evidence of an accomplice without any confirmation of his statement, although it is not generally expedient or the practice so to do. *R. v. Hastings and Graves*, 7 C. & P. *Ld. Denman, C. J. Park, J. and Alderson, B.*

(2.) Competency of Witnesses.

Forcible entry or detainer.

Page 398. § 11.—Upon an indictment for a forcible entry or detainer, where the justices are empowered to give restitution of the lands to the tenant; the tenant, whose land has been entered upon or detained, is not a competent witness. *R. v. Williams*, 9 B. & C. 549.

Husband and wife.

Page 399. § 21.—On an indictment against several prisoners, one of them called his daughter as a witness, but it appeared that she was the wife of another of the prisoners, and her evidence was therefore rejected. The case was afterwards submitted for the opinion of the judges, who held that the evidence was properly rejected. *R. v. Joseph Smith, Cobbey and others*, R. & M. C. C. 289. S. P. *R. v. George Hood*, R. & M. C. C. 281.

(4.) Examination of Witnesses.**(a) Privileged communications.**

Legal advisers.

Page 404. § 2.—In order that a communication may be privileged, the relation of attorney and client must subsist, otherwise it is not privileged. Thus, where a prisoner wrote from prison to a friend requesting him to ask the opinion of Mr. G., or some other attorney, "whether the punishment of forging a bill was the same when the names of the parties are entirely fictitious, as when the names are those of real persons." It was held that the communication was not privileged. *R. v. Brewer*, 6 C. & P. 363. *Park, J.*

Oath of secrecy.

Page 407. § 17.—A confession made under an oath of secrecy must be disclosed. The oath, although wicked, is not binding. *R. v. Shaw*, 6 C. & P. 372. *Patteson, J.*

(b) What questions may be asked.

Cross-examination.

Page 409. § 7.—When, after the examination of the prisoners' witnesses, a witness is called back and re-examined for the prosecution, the prisoner's counsel has a right to cross-examine him again. *R. v. Watson and another*, C. C. C. 6 C. & P. 653. *Taunton, J.*

If counsel for the prosecution upon opening the case state that he will call A. and B. as witnesses, the prosecutor's other witnesses may be examined by the prisoner's counsel as to the credibility of A. and B. *R. v. Nichols, Parsons, and another*, 5 C. & P. 600. *Parke, J.*

Page 410. § 10.—See tit. *Counsel*, ante, p. 1580.

Re-examination.

Page 411. § 14.—If the counsel for the prosecution call a witness, whose name is not on the back of the indictment, but do not examine him, and the witness is examined by the prisoner's counsel; any question put afterwards by the prosecutor's counsel

must be considered as a re-examination; and therefore the latter cannot ask any thing, that does not arise out of the previous examination by the prisoner's counsel. *R. v. Thomas Beezley*, 4 C. & P. 220. *Littledale, J.*

Although the court will call a witness on the back of the indictment, in order to give the prisoner's counsel an opportunity of cross-examining him, yet the witness not having been called by the prosecutor, but only at the instance of the prisoner, the witness is so far the witness of the prisoner, that the latter cannot be allowed to give evidence to contradict the witness (with a view to his discredit.) *R. v. John Bodle the younger*, 6 C. & P. 186. *Gaselee, J. and Vaughan, B.*

Witness called for prisoner's counsel to cross-examine him.

Page 412. § 21.—In *R. v. Searle, Park, J.* allowed a physician to be asked, whether the facts and appearances proved showed symptoms of insanity. *R. v. Searle, Mo. & Rob. 75.*

Medical men.

Page 413. § 25.—The court will always in a criminal case reject a witness remaining in court after all the witnesses on both sides have been ordered to leave it. *R. v. Wylde*, 6 C. & P. 380. *Park, J.*

Remaining in court contrary to order.

Page 413. § 28.—“Whatever is a confirmation of the original case cannot be given as evidence in reply; and the only evidence which can be given as evidence in reply, is that which goes to cut down the case on the part of the defence, without being any confirmation of the case on the part of the prosecution.” *Per Taunton, J. in R. v. Hilditch*, 5 C. & P. 299. In that case the prisoners set up an *alibi*, and the prosecutor offered evidence in reply to show that the prisoner was near the place at the time the robbery was committed. The same learned judge held that to be evidence in chief and not in reply, and therefore rejected it. *Ibid.*

What is evidence in reply.

Where a prisoner sets up as a case of *alibi* that he was at some distance from home, the prosecutor may give evidence in reply of a declaration by the prisoner that he was at home at the time. *R. v. Finden*, 6 C. & P. 132. *Tindal, C. J.*

(c) How the credit of witnesses may be impeached.

Page 413. § 1.—Where a witness denies words he has just uttered, a short-hand writer, who is present, may be examined to prove that he has taken down the words attributed to the witness. *R. v. Mary Slater*, 6 C. & P. 334. *O. B. S.*

Page 414. § 3.—A witness can not only not be compelled to answer that which *will* criminate him, but he cannot be compelled to answer that which *tends* to criminate him; and the reason is this, that the party would go from one question to another, and though no question might be asked, the answer of which would directly criminate the witness, yet enough would be got from him whereon to found a charge against him. Thus, upon the trial of an indictment for several libels, witness, a clerk of the defendant, was asked if he had written one of the libels, and it was held he was not bound to answer the question. It was also decided in the same case that the witness must answer the question—“Do you know who wrote it?” but that he was not bound to name the person, because it might be himself. *R. v. Slaney*, 5 C. & P. 213. *Lord Tenterden, C. J.*

What questions a witness may refuse to answer.

Upon the trial of an indictment for arson, a witness for the prosecution, who was himself in custody, on a charge of felony, was asked, by the counsel for the prisoner—“Have you not said that

Evidence, I. (Attendance of Witnesses.)

General evidence to discredit.

you committed the offence for which you are now in custody?" And it was held by *Park, J.* and *Littledale, J.* that the question ought not to be put. *R. v. Pegler, 5 C. & P. 521.*

Page 418. § 15.—It is not essential that witnesses who state that they would not believe another person on his oath, should ever have heard such person give evidence on oath, otherwise that class of evidence would always be inapplicable where the witness to be discredited (no matter how infamous) had never been examined before. The real question is, whether the witnesses have such a knowledge of the person's character and conduct, as enables them conscientiously to say that his statements are wholly unworthy of belief. *R. v. Bispham, 4 C. & P. 392. O. B. S.*

A witness for a defendant cannot be asked whether he has heard a witness for the prosecution commit perjury on the trial of a cause; and, in stating whether he would believe the witness upon his oath, he must do so from his knowledge of the witness's general character, and not from having heard him give evidence on a particular trial. *R. v. Hemp, 5 C. & P. 468. Denman, C. J.*

Page 418. § 16.—If counsel for a prosecution, upon opening his case, state that he will call particular persons as witnesses, the prisoner's counsel may cross-examine other witnesses for the prosecution as to the credibility of those persons. *R. v. Nichols, Parsons and another, 5 C. & P. 600. Parke, J.*

Page 418. § 16.—Where a witness was asked, on cross-examination, whether he was not bail for a previous witness, and he replied that he was, on a charge of keeping a gaming-house, the prosecutor was allowed to re-call the previous witness to prove that the charge was false, in order to prevent any impression against his testimony. *R. v. Noel, 6 C. & P. 336. O. B. S.*

Party cannot discredit his own witness.

Page 418. § 17.—If a witness, on the back of the indictment, is called by the court, merely for the purpose of allowing the prisoner's counsel to cross-examine him, the prisoner cannot afterwards call witnesses to discredit him. *R. v. John Bodle the younger, 6 C. & P. 186. Gaselee, J.*

(5.) *How the attendance of Witnesses may be enforced.*

Page 419. § 4.—In a criminal case, a person who is present in court when called as a witness, is bound to be sworn and give his evidence, although he has not been subpoenaed; and an indictment for stopping a highway is a criminal case for this purpose. *R. v. Sadler, 4 C. & P. 218. Littledale, J.*

What service of a subpoena is within the 45 G. 3. c. 92. s. 3.

Page 419. § 5.—Where a subpoena, issuing from a court of quarter-sessions, is served upon a person in another county in England, requiring him to appear and give evidence, the court of King's Bench cannot attach the witness in case of default, either by its general authority, or under 45 G. 3. c. 92. s. 3.; that act only applying to the service of such a subpoena in Scotland or Ireland. *R. v. Brownell, 1 A. & E. 598.*

But he might have been attached, if he had been served with a subpoena issuing out of the crown office of the court of King's Bench, and requiring him to give evidence at the quarter-sessions. *Id.*

Subpoena duces tecum.

Page 419. § 6.—Upon a *quo warranto* information, calling on the defendant to show cause why he held the office of bailiff of a borough, a witness, under *subpoena duces tecum*, who was steward

of the borough, and also attorney to the lord of the borough, is bound to produce documents which he holds in his public character as steward of the borough, and old precepts, and books of presentments are so held by him; but he is not bound to produce documents which he holds in his private capacity, as attorney of the lord, such as a case, and opinion of counsel thereon. *R. v. Woodley, Mo. & Rob.* 390. *Lord Denman, C. J.*

In order to obtain an attachment against a person for disobedience to a subpoena, requiring his attendance as a witness, it is necessary that the original subpoena should be shown at the time of serving him with a copy. *R. v. Wood, 1 Dow, P. C.* 509. *S. P. R. v. Sloman, 1 Dow, P. C.* 618. Attachment.

And, in order to subject a witness to an attachment for not obeying a subpoena, it must appear that he has been called upon it. *R. v. Stretch, 3 Dow, P. C.* 368. But see *R. v. Stretch, 4 Dow, P. C.* 30, where *semble* the contrary was held.

But it is not necessary that the officer should have the subpoena in his hand when he calls the witness: it is sufficient if the writ is exhibited in court. *R. v. Fenn, 3 Dow, P. C.* 546.

(7.) *Of Dying Declarations.*

Page 422. § 1.—In order to render a dying declaration admissible in evidence, it is not enough for the deceased to have expressed himself in general terms, that he thought he should ultimately never recover; if it does not appear, that he was actually impressed with the prospect of speedy dissolution. *R. v. Van Butchell, 3 Car. & P.* 629. *Hullock, B.* Deceased must be impressed with the belief of speedy dissolution.

§ 2.—In order to give a statement of the deceased, in evidence in a case of murder, the surgeon was called who said, “I had told the deceased she would not recover, and she was perfectly aware of her danger; I told her I understood she had taken something; she said she had, and that damned man had poisoned her. I asked her what man, and she said C. She said she hoped I would do what I could for her for the sake of her family. I told her there was no chance of her recovery.” *Bosanquet, J.* said that this showed a degree of hope in her mind, and that to render a declaration of this kind admissible, the deceased must have had the impression on her mind of an almost immediate dissolution. *R. v. Thomas Crockett, 4 C. & P.* 544.

Any hope of recovery, however slight, existing in the mind of the deceased at the time of the declarations made, will render the evidence of such declarations inadmissible. But where a witness stated that before the declarations were made the deceased knew that he must die, and the magistrate, previous to his receiving them, desired him, as a dying man, to tell the truth, to which the deceased replied that he would, it was held that the statement was admissible as a declaration in *articulo mortis*. *R. v. George Hayward, 6 C. & P.* 157. *Tindal, C. J.* Any hope, however slight, renders the declaration inadmissible.

§ 3.—“It is not necessary to prove expressions of apprehension of immediate danger.” Where the deceased thought at the time he made the declarations that he would not survive, but might die on that day,—the circumstance that he lived three days after is not material. *R. v. Bonner, 6 C. & P.* 386. *Patteson, J.* Apprehensions of death need not be expressed.

Page 422. § 4.—On an indictment for robbery, the declaration

in *articulo mortis* of the party robbed is not admissible in evidence. *R. v. Lloyd*, 4 C. & P. 233. *Bolland, B.*

Child.

Page 423. § 8.—Neither is a declaration by a child only four years old, in *articulo mortis*, admissible in evidence; because a child of such tender years cannot have that idea of a future state, which is necessary to make such a declaration admissible. *R. v. Pike*, 3 C. & P. 698. *Park, J.*

Where declaration part of the *res gestæ*.

In a case of manalaughter, a witness stated that he saw a cabriolet drive by at a rapid rate but did not see the accident. Immediately afterwards witness heard deceased groan, went up to him and asked him what was the matter. It was held that what the deceased said at the instant as to the cause of the accident was admissible in evidence. *R. v. Foster*, O. B. S. 6 C. & P. 325. *Park, J. Patteson, J. and Gurney, B.*

(8.) *Confessions and Admissions.*—Page 423.

And see *Examinations*, *post*, p. 1596.

Implied admissions.

Whatever is said to a prisoner on the subject matter of the charge to which he makes no direct answer, is receivable as evidence of an implied admission on his part, and observations made to a prisoner by his wife, on the subject of the charge against him, and to which he gave an evasive reply, are receivable in evidence against the prisoner, as an implied admission on his part, although the wife is not a competent witness. *R. v. Smithies*, O. B. S. 5 C. & P. 332. *Gaselee, J. and Parke, J.*

Proof to negative inducement.

§ 2.—Where a prisoner was in custody of B. a constable, C. another constable, went into the room, upon which B. left it, and the prisoner immediately afterwards made a confession to C., but C. did not caution him; it was held that before the confession could be given in evidence, B. must be called to prove that he had held out no inducement to the prisoner. *R. v. Swathins and others*, 4 C. & P. 548. *Patteson, J.*

But if the prisoner was not at the time he made the confession in custody under any charge, but was merely detained as an unwilling witness, it is not necessary to call B. the constable as a witness. *Id.*

What inducement will exclude the confession.

Telling prisoner that it will be better to confess.

Page 424. § 3.—“Any person telling a prisoner that it will be better for him to confess, will always exclude any confession made to that person,” although not a person in authority. “Whether a prisoner having been told by one person that it will be better for him to confess, will exclude a confession subsequently made to another person, is often a nice question, but it will always exclude a confession made to the same person.” *R. v. David Dunn*, 4 C. & P. 543. *Bosanquet, J. R. v. Slaughter*, 4 C. & P. 544. n. (b.) *Bosanquet, J.*

Where a surgeon said to the prisoner, “you are under suspicion of this, and you had better tell all you know,” it was held that a statement made afterwards to the surgeon was inadmissible. *R. v. Hannah Kingston*, 4 C. & P. 387. *Parke, J. and Littledale, J.*

Where witness was placed by the constable to take care of the prisoner, *Mary Pulley* (who was charged with the prisoner *Enoch* with the murder of her bastard child) was told by witness that “she had better tell the truth, or it would lie upon her and the man would go free,” it was held that although the inducement held out was to free herself, it rendered her subsequent declaration to the witness in-

admissible. *R. v. Enoch & Pulley*, 5 C. & P. 539. *Parke, J. and Taunton, J.*

Saying to a prisoner, "It would have been better if you had told at first," will exclude any subsequent statement to that person. *R. v. Walkeley and Clifford*, 6 C. & P. 175. *Gurney, B.*

So saying to one of several prisoners, "You had better split and not suffer for all of them," will exclude what the prisoner subsequently said to that person. *R. v. Thomas and others*, 6 C. & P. 353. *Patteson, J.*

The captain of a vessel said to one of his sailors suspected of stealing his watch, "That unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as you get to Newcastle:—you are a damned villain and the gallows is painted in your face:" and it was held that a subsequent confession was inadmissible. *R. v. Parratt*, 4 C. & P. 570. *Alderson, J.* Threat.

So where a constable said to a prisoner, "It is of no use for you to deny it, for there is the man and boy who will swear they saw you do it," it was held that the prisoner's statement to the constable afterwards was inadmissible. *R. v. Mills*, 6 C. & P. 146.

§ 5.—The committing magistrate told the prisoner that if he would make a disclosure he would do all he could for him. After the prisoner had been in custody he made a statement to the turnkey of the prison, who held out no inducement to him, *but had not given him any caution.* *Parke, J.* said, that as the prisoner had not been cautioned he would not receive the evidence. *R. v. Cooper and Wicks*, 5 C. & P. 535. When rejected for want of cautioning the prisoner.

Page 424. § 6.—The prosecutrix told the prisoner that if she did not tell all about it that night, the constable would be sent for next morning to take her before the magistrates, when she made a statement which was clearly inadmissible. The next morning the constable was sent for and took her into custody, and while they were on the way to the magistrates, she, without any inducement having been held out by the constable, made a statement to him. It was held that this latter statement was admissible as the inducement was at an end. *R. v. Jane Richards*, 5 C. & P. 318. *Bosanquet, J.* What inducement will not exclude a confession.

Where a person said to the prisoner, "I hope you will tell, because Mrs. G. can ill afford to lose the money," and the constable said, "If you will tell where the property is you shall see your wife," it was held that there was not such an inducement as would exclude the evidence of what the prisoner said afterwards. *R. v. W. Lloyd and G. Lloyd*, 6 C. & P. 393. *Patteson, J.*

And where a witness said to the prisoner, "I wish you would tell me how you murdered the boy—pray split." And the prisoner replied, "Will you be upon your oath not to mention what I tell you?" upon which the witness took the oath accordingly. It was held that this was not such an inducement as would exclude a subsequent confession. *R. v. Shaw*, 6 C. & P. 372. *Patteson, J.*

Where two constables had held out an inducement to the prisoner to make a confession, which he did, and upon his being brought before the committing magistrate, the magistrate told the prisoner that he need not say any thing unless he pleased, and that his confession would do him no good, it was held that it was not necessary that the magistrate should have told the prisoner that his former confession

would have no effect, and that the prisoner's subsequent statement to the magistrate was admissible in evidence. *R. v. Howes*, 6 C. & P. 404. *Lord Denman, C. J.*

A confession made after a caution admissible notwithstanding a previous inducement.

Page 424. § 6.—A prisoner charged with murder was visited by B., who was both a magistrate and a clergyman, and who told him, that if he was not the person who struck the fatal blow, and would tell all he knew, he (B.) would use all his endeavours and influence to prevent any thing from happening to him; and that if the prisoner did not make a disclosure, some one else would probably do so. After this, B. wrote to the secretary of state, who returned an answer that mercy could not be extended to the prisoner; which answer was communicated to him by B. The prisoner afterwards sent for the coroner, saying, that he wished to make a statement to him; upon which the coroner told him, that if he did so, it would be used as evidence against him. Under these circumstances, it was held, that a confession made to the coroner was perfectly admissible in evidence. *R. v. Clewes*, 4 C. & P. 221. *Littledale, J.*

Persuasion by a clergyman.

Page 426. § 12.—A confession, made in consequence of the persuasion of a clergyman, but not with any view of temporal benefit, is admissible. *R. v. Gilham, Ry. & M. C. C.* 186.

Questioning a prisoner.

Page 427 § 14.—In a case where the prisoner was questioned before the magistrate, and his examination was taken down in writing but not signed, it was held that a magistrate has a right to put questions to a prisoner examined before him on a charge of felony, and may give evidence of what the prisoner said at each examination, refreshing his memory from his notes. *R. v. Jones*, O. B. S. 1828, *cor. Bayley, J., Gaselee, J., and Vaughan, B. Car. Suppl.* 13.

In the case of *R. v. Rodgers*, for sodomy with *Charles Bennett*, tried at the York Spring Assizes, 1834, before *Alderson, J.*, the prosecutor offered a confession in evidence made by the prisoner in the presence of his master *Mr. Wilson*, the witness, and others. *Mr. W.* said to prisoner, "Thomas, this is a serious charge against you, and if proved you may be hanged," but there was nothing else said to the prisoner either by way of threat, promise, caution, or otherwise, before his confession was taken down. The reception of the evidence was objected to on the grounds that what *Mr. W.* said amounted to a threat, and that there was no caution; but *Alderson, J.*, after conferring with *Taunton, J.*, held that the evidence was admissible. The witness then stated that the prisoner was interrogated by witness, and the confession was made in answer to those interrogatories. The reception of the evidence was again objected to on the ground that the confession was obtained by coercion and by means of improper interrogation. *Alderson, J.* said, "there can be no doubt as to the admissibility of the evidence, and the only wonder is that there could ever be any doubt on the subject either upon the principles of law or common sense. It is not a practice of which I approve, but I cannot therefore reject the evidence entirely, it must be left to the jury to say whether they believe it or not." *R. v. Thomas Rodgers, MS.*

A prisoner ought to be cautioned but not dissuaded from confessing.

A prisoner ought to be cautioned by a magistrate, but he ought not to be dissuaded from making a perfectly voluntary confession, because that is shutting up one of the sources of justice. *R. v. Green and others*, 5 C. & P. 312. *Gurney, B.*

Where a statement made by the prisoner to the magistrates, before the evidence in support of the charge had been gone through, was offered in evidence, *Garrow, B.* inclined strongly to think it was inadmissible, and, observed, that nothing which a prisoner stated before he knew what the evidence against him was, ought to be used to criminate him. His lordship, however, admitted the evidence, but expressed his doubts as to its legality, and the prisoner was acquitted. *R. v. Fagg, 4 C. & P. 566.*

Statement made by a prisoner to a magistrate, before the evidence gone through.

A prisoner should only be asked, if he wishes to say any thing in answer to the charge, when he has heard all that the witnesses in support of it have to say against him. *Ib.*

In a subsequent case the prisoner, upon being brought up before the magistrates, and before the evidence against him had been gone through, made a full confession of his guilt, which was immediately reduced into writing, read over to him, and he put his mark to it. This confession was attested thus:—"Taken and signed by the said *John Heneker Bell*, in the presence of ———." Several of the depositions against the prisoner were taken in his absence. The confession being offered in evidence, four objections were taken to its admissibility. First, that it was made by the prisoner before the evidence against him had been gone through, (citing *R. v. Fagg, 4 C. & P. 566.*) Second, that several of the depositions had been taken in the absence of the prisoner. Third, that there were interlineations and erasures. And fourth, that the attestation was false. *Gaselee, J.* after conferring with Lord *Tenterden*, said, "My Lord *Tenterden* agrees with me, that the opinion of Mr. Baron *Garrow*, in *R. v. Fagg*, is much too general, as it would go to exclude any acknowledgment of guilt made by a prisoner to a constable. He also agrees with me, that the interlineations and erasures are cured by the attestation, which cannot be called a false attestation, though it would have been more regular to have said, that the prisoner put his mark as is customary in affidavits in the superior courts. We are both of opinion that it is no objection that some of the depositions were taken in the absence of the prisoner. We are also both of opinion that the confession may be repeated by the magistrate's clerk, who heard it, and that he may refresh his memory by the aid of the written paper." A fifth objection was then taken, that as the rules of law required that the best evidence should be given, the parol statement of the clerk was not receivable, and the paper ought to be used as a confession, or the evidence should not be received at all. *Gaselee, J.* after again conferring with Lord *Tenterden*, said, "We are still of opinion that the clerk may give the whole in evidence, refreshing his memory by the written paper." *R. v. J. H. Bell, 5 C. & P. 162.* And in a case which occurred on the *Norfolk* circuit, the prisoner made a confession before the evidence was gone through, but the depositions and confession were drawn up as if the whole evidence had been taken before the confession was made. The evidence was objected to, and *R. v. Fagg, 4 C. & P. 566.* was cited. Lord *Lyndhurst, C. B.* rejected the evidence on the ground that the document was false, but intimated that he did not consider the objection as tenable, upon the ground mentioned in the authority referred to. *Note to R. v. J. H. Bell, 5 C. & P. 163.*

Page 427. § 15.—It has been held, that where a statement was made by a prisoner before a magistrate, and the clerk by mistake

Examination purporting to be taken upon oath cannot be shown not to be so taken.

entered it in the information book, and it was headed, "The information and complaint of R. B.," it could not be received in evidence, although the mistake could have been explained by the magistrate's clerk. *R. v. Bentley*, 6 C. & P. 148. *Gurney, B.*; and *vide note to R. v. J. H. Bell*, 5 C. & P. 162. *stated supra*.

But where the prisoner, when before the committing magistrate, was sworn by mistake, it being supposed that he was a witness, but when the mistake was discovered, the deposition which had been commenced was destroyed. The prisoner subsequently made a statement after having been cautioned by the magistrate, and it was held, that it was admissible in evidence. *R. v. Webb and Goddard*, 4 C. & P. 564. *Garrow, B.*

The rule that confessions made on oath are inadmissible, does not apply to depositions.

The rule, that the confession of a prisoner, made in an examination taken upon oath, is inadmissible in evidence against him, only applies to the examination of *the party accused*, not to the deposition of a witness not at the time under any charge. And as a person may on all occasions, when called as a witness, object to answer questions which may have a tendency to expose him to a criminal charge, although he may neglect to do so, yet his deposition is evidence against him. Thus, where *S.* was charged with forgery, and *H.* was examined as a witness upon that charge and sworn to a deposition; and *H.* himself being afterwards indicted upon a *distinct charge* of forgery, it was held, that the deposition of *H.* was admissible in evidence against him. *R. v. Haworth*, 4 C. & P. 254. *Parke, J.* *R. v. Tabbie*, 5 C. & P. 530. *Vaughan, B. S. P.* And see *R. v. Edmunds*, 6 C. & P. 164. *stated post*.

But if a witness in support of a charge is afterwards himself charged, his statement made on oath is inadmissible.

But in a case before Mr. Baron Gurney, where the prisoner was in the first instance a witness upon the investigation of a case of felony before a magistrate, and was sworn to a deposition, but was afterwards, on the same day herself accused and committed; it was held upon the trial, that her examination was inadmissible in evidence against her; and the learned judge said, "This being a deposition made by the prisoner at the same time as all the other depositions on which she was committed, and on the very same day on which she was committed, I think it not receivable. I do not think this examination was perfectly voluntary." *R. v. Celia Lewis*, 6 C. & P. 161.

And so where a prisoner having in the first instance been sworn as a witness in a case of felony, but afterwards became one of the parties accused, it was held, that parol evidence of what she said upon her examination was not admissible. *Ib.* and *R. v. Davis and another*, 6 C. & P. 177. *Gurney, B.*

Confession not evidence against a third person.

Page 428. § 18.—The indictment against the prisoner for receiving stolen brass, in the first count, stated the conviction of *E. S.* the principal, and in the second, that the stealing had been by a person unknown. It was held by *Bosanquet, J.*, that an examined copy of the record of the conviction of *E. S.* was *primâ facie* evidence against the prisoner upon this indictment, but not conclusive. And the learned judge observed, "There is no doubt that the accessory may controvert the guilt of the principal, but I take it that whatever is evidence against the principal, is *primâ facie* evidence of the principal felony as against the accessory; and if the principal felon is convicted on his own confession, that is *primâ facie* evidence of his guilt as against the accessory, but not conclusive. And if this

objection were valid, it would set up the last count of the indictment, because, if this is not evidence as to the person who stole the brass, there is no evidence to show who did it. Though I agree, that if an offence is charged to have been committed by a person unknown as principal, and it appears that he is known, the prosecution must fail." *R. v. John Blick*, 4 C. & P. 377.

Upon the trial of an indictment against an accessory, it has been held that a confession by the principal in the presence of the prisoner is not admissible in evidence to prove the guilt of the principal. *R. v. John Turner*, R. & M. C. C. 347.

And *semble*, if the principal have been convicted, and the indictment against the accessory state not the conviction, but his guilt, the conviction would not be admissible evidence of the guilt of the principal. *Ib.*

Page 428. § 19.—Where the names of two persons, charged with the same offence as the prisoner, were mentioned in the confession, Littledale J. held, that the confession should be read just as it was, without any concealment of those names. He added, that he had considered the point very much, and was of opinion that the names ought not to be left out; though he should tell the jury, that the statement was no evidence against any one, except the person making it. *R. v. Clewes*, 4 C. & P. 221. And the like was determined by the same learned Judge upon two other occasions; in one, where a letter of a prisoner was read in evidence against him, in which the names of other prisoners were mentioned; *R. v. Fletcher and others*, 4 C. & P. 250.; and in another case, where a witness gave evidence of a conversation with a prisoner, in which he said something implicating another prisoner. In this last case the learned Judge well observed, that the witness, being sworn to tell the whole truth, must tell all that the prisoner said to him; for if he left out the name of any one mentioned by the prisoner, he would not, in that case, tell the whole truth. *R. v. Hearne and others*, 4 C. & P. 215. *Littledale, J.*

Page 428. § 20.—Where a prisoner said in his confession, that he was present at a murder, but took no part in the commission of it; this, though evidence for him, as well as against him, is proper to be left to the jury; for they may, if they see cause, believe one part of it, and disbelieve another. *R. v. Clewes*, 4 C. & P. 221. *Littledale, J.* So, where the prosecutor offered evidence of what was said by the prisoner before the justice, it was held to be evidence as well for as against him, and that the jury might believe his account and acquit him. *R. v. Thomas Higgins*, 3 C. & P. 603. *J. Parke, J.*

Mode of Proving Confessions.

And see *post*, *Examinations.*

The usual course, when a confession is reduced into writing and signed by the prisoner, is to put it in, and have it read by the officer of the court. But when it is taken down and not signed, the person who took it down states what the prisoner said,—refreshing his memory from the paper. *Vide R. v. Jones*, *Car. Suppl.* 13. *R. v. Swathins and others*, 4 C. & P. 548. *R. v. Watkins*, n. (b) 4. C. & P. 550. *R. v. J. H. Bell*, 5 C. & P. 162.

In *R. v. Thomas Rodgers*, a witness who proved a confession

Confession by principal in the presence of accessory not evidence against the latter.

The whole of a confession must be stated, although it mentions other persons.

Confession
made in answer
to questions.

elicited from the prisoner by means of questions, was about to read the confession as he had taken it down in writing; and upon an objection taken for the prisoner, that the witness could only use the paper for the purpose of enabling him to remember what passed on the occasion, *Alderson, J.* said, "If the very words made use of were taken down, there can be no objection to its being read,—for there is no particular way in which a paper is to be used by a witness for the purpose of refreshing his memory." In answer to a question from the learned judge, the witness stated, that when the prisoner said "yes" or "no," the answer was put down in the words of the question. The witness was then directed to give the exact words of the questions and answers as nearly as he could—refreshing his memory from the written paper. *R. v. Thomas Rodgers, for sodomy, York Spring Assizes, 1834, MS.*

II. Of Written Evidence.

(1.) Of Public Documents.

Appeal at the
quarter ses-
sions.

Page 432. § 19.—To prove the hearing of a parish appeal at the quarter-sessions, a record, or an examined copy must be produced; the sessions' book is insufficient. *R. v. Ward, 6 C. & P. 366. Park, J.* And see *Potter v. Cooper, 6 C. & P. 354. Patteson, J.* and *R. v. Joseph Thring, 5 C. & P. 507. Gurney, B. S. P.*

Parish register.

Page 435. § 30.—The entry in a parish register of the baptism of a party is not, of itself alone, sufficient evidence of the time of birth; for it amounts to nothing more, than something told the clergyman at the time of the christening. *Wihen v. Law, 3 Star. Rep. 63. Bayley, J. R. v. Clapham, 4 C. & P. 29. Lord Tenterden, C. J.* And an entry in the register-book by the minister of the parish of the baptism of a child,—which had taken place before he became minister, or had any connection with the parish, and of which he had only received information from the parish clerk,—was also held to be inadmissible in evidence; as well as the private memorandum of the fact made by the clerk, although the latter was present at the baptism. *Doe v. Bray, 3 B. & C. 813.*

(2.) *Examinations and Depositions.*

Page 436.—If nothing appears on the face of the examination of a prisoner to show that it was an examination taken on a charge of felony, or that the magistrates who signed it were then acting as such, the clerk to the magistrates must be called to prove what the prisoner said, and refresh his memory from the paper. *R. v. Tar-rant, 6 C. & P. 182. Patteson, J.*

Parol evidence.
Of depositions.

Page 436. § 2. — Upon the trial of an indictment for murder, it appeared that the prisoner and deceased had a quarrel, and the prisoner struck deceased a blow. The prisoner was brought before two magistrates on a charge of assault, and was convicted and fined, under 9 G. 4. c. 37. s. 27. The blow afterwards proved mortal. One of the magistrates was called, who stated that the deceased made a statement, and the prisoner made a statement in answer to it, neither of which were reduced into writing, the case being one of summary conviction, and the statute not requiring the evidence to be taken down in writing. *Tindal, C. J.* held the evidence to be admissible, but said—"I shall, however, not hold that what the deceased said is evidence as proving the facts he stated, as it would

be if it were a deposition taken under the stat. 7 G. 4. c. 64.; but only evidence, as producing an answer from the prisoner, like any other conversation; and I do not think it the less evidence because it is on oath. I shall, therefore, admit it as a conversation. *R. v. Edmunds*, 6 C. & P. 164.

A prisoner being under examination before a magistrate on a charge of felony, a statement was made in his presence by the solicitor for the prosecution, which the witness called to prove said, he *believed* had been taken down in writing. Under these circumstances, it was held, that parol evidence of the statement was not admissible on the trial of the prisoner. *R. v. Hollingshead*, 4 C. & P. 242. *Vaughan, B.* Indeed, it is always presumed, that what is stated *on oath* before a magistrate is taken down in writing; and therefore parol evidence of such a statement is not receivable, unless it be first clearly shewn that it was not so taken down. *Phillips v. Wimburn*, 4 C. & P. 273. *Tindal, C. J.* But where the written examination of a prisoner is inadmissible, by reason of any irregularity in it, then parol evidence may be received of what he said before the magistrate. *R. v. Reed*, 1 M. & M. 403. *Tindal, C. J.*

Parol evidence of examinations.

Parol evidence is admissible, to add to the written examination of a prisoner. *R. v. Harris, Evans and Butler*, R. & M. C. C. 338. *Venafrá v. Johnson*, Mo. & Rob. 316. *S. P. Gaselee, J.* after conferring with the other four judges of the C. P.

But where the magistrate returned that the prisoner said "I decline to say any thing,"—parol evidence was held inadmissible to prove a statement alleged to have been made by him whilst under examination. *R. v. Joseph Walter*, 7 C. & P. *Lord Abinger, C. B.*

Page 436. § 3.—Where an examination of a prisoner is not signed by him, the examination should not be read, but the clerk to the magistrates, by whom it was taken, should refresh his memory from it. *R. v. Pressly*, 6 C. & P. 183. *Patteson, J.*

As to signing.

In a case of felony the examinations of the prisoners were signed by the magistrates, but not by the prisoners. It was proved that the exact words of the prisoners were taken down and afterwards read over to them; but they made no observation, and were not requested to sign them. *Alderson, B.* held the examinations admissible, and they were read in evidence. *R. v. Hunt and Cockburn*, *Northumberland Spring Assizes*, 1835. *MS.*

Page 437. § 6. — If a prisoner has *signed* his examination, proof of his signature, by a person present when he signed it, is sufficient, without calling either the justice or the clerk; but if *not signed* by him, or if his mark only be attached to it, it must be proved by the magistrate or the clerk. If a prisoner signs his name, this implies that he can read, and that he has read the examination and adopted it; but if he has not signed it, or has only put his mark, there are no grounds to infer that he can read, or that he knows the contents, and no person can swear that the examination has been correctly read over to him, except the person who read it. *R. v. Chappel*, Mo. & Rob. 395. *Lord Denman, C. J.*

Proof of examination.

In *R. v. Richards and another*, for larceny, at *Salisbury* summer

Evidence, II. (*Examinations.*)

assizes, 1834, the prisoner's examination was offered in evidence. A witness proved that he saw the prisoner and the magistrate sign the examination, and heard the prisoner cautioned. It was objected that the examination was inadmissible, unless either the magistrate or the clerk proved that it was properly taken; and 2 *Hale's P. C. ch. xxxviii.* was cited. *Patteson, J.* after saying that his own opinion was strongly opposed to such a doctrine, yielded, nevertheless, to the authority of Lord *Hale* in the passage cited, and refused to admit the examination; but the learned judge added, that had the question mainly turned upon its admission or rejection, he would have received the evidence, and reserved the point, and that he by no means wished his decision to be cited as a precedent. *R. v. Richards and another. Mo. & Rob. 396. n. (a).*

In another case, which occurred before the same learned judge and *Vaughan, J.*, a constable proved that he was present when the prisoner was examined, he heard the examination read over to her, saw the prisoner put her mark to it, and the magistrate sign it, and witness subscribed it as an attesting witness, but he did not see the contents of the paper. The same objection was taken as in the preceding case; but the learned judges held that the examination was sufficiently proved, and might be read, and *Patteson, J.* added that he was by no means satisfied that it was in any case necessary to call either the magistrate or his clerk. *R. v. Isabella Hope, Mo. & Rob. 396. n. (a). 7 C. & P. S. C. R. v. George Taylor, 7 C. & P. Patteson, J.*

And in another case it was held that proof of the magistrate's signature was sufficient *prima facie* evidence to show that the examination was duly taken. *R. v. Mary Foster, 7 C. & P. Bosanquet, J. and Alderson, B.*

In a case of murder, at Lancaster summer assizes, before Lord *Lyndhurst, C. B.*, it was proposed to prove the prisoner's examination before the coroner, by evidence of the hand-writing of the latter, and by calling a person who was present at the examination. It appeared that there were interlineations in the examination; and his lordship said that he thought the clerk, who had taken down the examination, ought to be called, and the evidence was withdrawn. *Brogan's case, Roscoe's Crim. Evid. 48.* See the case of *R. v. J. H. Bell, 5 C. & P. 162. ante, p. 1593.*

In *Priestley's case, Park, J.* held that proof of the hand-writing of the prisoner and of the magistrate was sufficient, and admitted the examination so proved in evidence. *Priestley's case, Lew. C. C. 74.*

Depositions,
when admissi-
ble.

Page 437. § 8.—Although a witness may be too ill to attend the assizes, his deposition is not therefore admissible in evidence. *R. v. Ann Savage, 5 C. & P. 143. Patteson, J.*

Nor is parol evidence admissible of what the witness said in the presence of the prisoner during the examination, the examination having been reduced into writing. *Ib.*

A deposition taken in pursuance of the stat. 7 G. 4. c. 64. is evidence in case of the death of the deponent, or a permanent inability in him to attend the trial. *R. v. Edmunds, 6 C. & P. 164. Tindal, C. J.*

So where a witness was bed-ridden and there was no likelihood of her ever being able to attend. *R. v. Hogg and others, 6 C. & P. 176. Gurney, B.*

Where a witness is too ill to attend the assizes, it is a good ground for postponing the trial, but it will not make the deposition of the witness before the magistrate admissible in evidence. *R. v. Ann Savage*, 5 C. & P. 143. *Patteson, J.*

(3.) *Private Documents.*

Page 439.—Upon an indictment for sending a threatening letter, the court ordered the letter to be deposited with the officer of the court, in order that the prisoner's witnesses might inspect it. *R. v. Harrie*, O. B. S. 6 C. & P. 105.

Page 440. § 3.—A clerk may prove the handwriting of a party by his knowledge of it, acquired by his seeing the letters of the party which have been received at his master's counting-house. *R. v. Slaney*, 5 C. & P. 213. *Lord Tenterden, C. J.* Hand-writing.

Page 440. § 4.—Although a disputed handwriting cannot be proved by a comparison with that which is acknowledged or proved to be genuine, yet such a comparison may be used in corroboration of other evidence. But the comparison must be with other documents which are in evidence for other purposes;—a writing is not admissible in evidence for the purpose of making such comparison. *Solita v. Yarrow*, Mo. & Rob. 133. *Lord Tenterden, C. J.* *Griffith v. Williams*, Mo. & Rob. 134. and 1 C. & J. 47. S. C. and *R. v. Morgan*, Mo. & Rob. 134. *Bolland, B.* Comparison of hands.

Page 441. § 5.—If a written instrument is charged to be part of a fraud or other crime, it is immaterial whether it is stamped or not. *R. v. Fowle & Elliott*, 6 C. & P. 592. *Lord Tenterden, C. J.* Stamps.

Where an indictment is founded on a written instrument, and the instrument itself is the crime, the instrument is admissible in evidence although unstamped. But if an indictment be for an offence distinct from the instrument, and the instrument is introduced collaterally, it is not admissible unless properly stamped. *R. v. Eliza Smyth and others*, 5 C. & P. 201. *Lord Tenterden, C. J.*

Omnia presumuntur esse rite acta donec probetur in contrarium.

Page 444. § 14.—Evidence that a letter carrier acted as such is sufficient without proving his appointment. *R. v. Rees and another*, 6 C. & P. 606. *Parke, B.* Public officers.

So evidence that a person acted in a public service, is sufficient without proving his appointment. *R. v. Borrett*, O. B. S. 6 C. & P. 124. *Littledale, J.*, *Bolland, B.*, and *Bosanquet, J.* And see *Adinabit*, ante, p. 1488.

IV. *Of General Rules of Evidence.*

(1) *Best possible Evidence.*

Page 445. § 5.—Semble that parol evidence is admissible of a printed paper affixed to a wall (cautioning persons not to attend an illegal meeting), and that it is unnecessary to produce the original manuscript. The usual way in such cases is to give a copy to the witness and ask him if it is a copy of what he saw. *R. v. Fursey*, O. B. S. 6 C. & P. 81. *Gaselee, J.* and *J. Parke, J.* Parol evidence of inscriptions.

Page 447. § 12.—Where a prisoner's attorney produced a deed as part of the evidence of his client's title upon the trial of an eject-

ment in which the prisoner was lessor of the plaintiff, and the deed was delivered back to his attorney when the trial was over, it was held to be in the prisoner's possession, and the prisoner not producing it in pursuance of notice, secondary evidence of its contents was received. *R. v. Hunter*, 4 C. & P. 128. *Vaughan, B.*

Page 448. § 14.—Notice to produce a document served upon a prisoner during the assizes, two days before the trial, is insufficient to let in secondary evidence of its contents. *R. v. Ellicombe*, 5 C. & P. 522. *Mo. & Rob.* 260. *Littledale, J. and Park, J. S. P. R. v. Haworth*, 4 C. & P. 254. *Parke, J.*

§ 15.—Where an indictment is for setting fire to a dwelling-house, with intent to defraud an insurance office, it is not such a notice to the prisoner, as will dispense with a notice to produce the policy of assurance, so as to let the prosecutor in to give secondary evidence of its contents. *R. v. Ellicombe*, 5 C. & P. 522.

In a case of forgery where the prisoner was proved to have said that he had destroyed the forged deed upon which the charge was founded, it was held to be unnecessary to prove any notice to produce the deed, so as to let in secondary evidence of its contents. *R. v. Haworth*, 4 C. & P. 254. *J. Parke, J.*

(2.) Hearsay Evidence.

Where part of
the *res gestæ*.

Page 451. § 4.—On an indictment for breaking a machine (under 7 & 8 G. 4. c. 30. s. 4.) a witness may be asked whether the mob by whom the machine was broken did not compel persons to go with them and give one blow to each machine; and also whether, at the time when the prisoner and himself were forced to join the mob, they did not agree together to run away from the mob the first opportunity. *R. v. Crutchley*, 5 C. & P. 133. *Patteson, J.*

Where a constable entered a house with a warrant in his hand and searched it; upon an indictment against him and others for a forcible entry, evidence may be given of what the constable said at the time as to the person for whom he was searching. *R. v. Eliza Smyth and others*, 5 C. & P. 201. *Lord Tenterden, C. J.*

Upon an indictment for robbery, the prosecutor proved that he went early the next morning and complained to a constable, and mentioned the name of one of the persons who had robbed him. It was held that the prosecutor could not be asked what name he mentioned. But that the constable might be asked, whether in consequence of the prosecutor mentioning a name to him, he went in search of any person, and if he did, who that person was. *R. v. Wink*, 6 C. & P. 397. *Patteson, J.*

In a case of manslaughter, a witness proved that he saw the prisoner's cab drive past at a rapid rate, but did not see it go over the deceased's body. Witness immediately after heard the deceased groan and went up to him, when the deceased made a statement as to how the accident happened. And it was held that the statement was admissible in evidence as part of the *res gestæ*. *R. v. Foster*, 6 C. & P. 325. *Patteson, J.*

(3.) What Allegations must be proved, and what is a Variance Misnomer.

Misnomer.

Page 454. § 3.—If an offence be charged to have been committed

by a person unknown, and it appear that he is known, the prosecution must fail. *Per Bosanquet, J.* in *R. v. John Blick*, 4 C. & P. 377. Person unknown.

In the case of *R. v. Mary Smith*, the prisoner (a single woman) was indicted for murdering "a certain female child, whose name to the jurors was unknown." But the indictment did not state whose child the deceased was. The deceased was a child twelve days old, which had not been baptized, but the prisoner its mother had said she would like to have it called *Mary Anne*, and on two occasions afterwards, called the child *Mary Anne*, and on another "little *Mary*." It was proved also that the prisoner's master, the father of the child, was a Baptist, and that it is their practice only to baptize adults. An objection was taken for the prisoner, that the deceased having acquired a name by reputation, must be described by that name, and therefore that the prisoner ought to be acquitted. The prisoner having been found guilty,—*Gurney, B.* reserved the point for the consideration of the fifteen judges, and in the course of the ensuing term they considered the case, and held the conviction right. *R. v. Mary Smith*, 6 C. & P. 151.

Page 455. § 4.—A prosecutor may be described by any name he is generally known by. *R. v. James Berriman and Thomas Berriman*, 5 C. & P. 601. *Parke, J.* *R. v. —*, 6 C. & P. 408.

Any name by which a party has been known is sufficient.

Upon an indictment for attempting to administer poison to "*Elizabeth*, the infant female bastard child of *M. D.*" It was objected to the indictment that it only mentioned a Christian name of the child, without mentioning a surname. And Lord *Lyndhurst, C. B.* said, "the reason of the want of a surname, appears in the indictment; it is stated that the child is a bastard child; I think the indictment sufficient." *R. v. Robert Yates, Lancaster Summer Assizes*, 1834. *MS.*

(5.) Evidence to be confined to the Point in Issue.

Page 462. § 2.—Upon an indictment for stealing a piece of pork, a bowl, some knives, and a loaf of bread, it appeared that the prisoner entered the prosecutor's shop and ran away with some pork, but in about two minutes he returned, replaced the pork in a bowl which contained the knives, and took away the whole. In about half an hour he returned, and took away the loaf. Held that the taking of the loaf could not be given in evidence upon that indictment; that the prisoner's taking off the pork and returning in two minutes and taking off the bowl must be taken to be one continuing transaction; but that half an hour was too long a period to admit of that construction, and therefore that the taking of the loaf was a distinct offence. *R. v. Birdseye*, 4 C. & P. 386. *Littledale, J.*

Where proof confined to one felony.

See also *R. v. Hunt and Cockburn*, *tit. Election of Prosecutor*, *ante*, p. 1583.

Page 462. § 4.—Upon an indictment for stabbing, in order to identify the instrument, evidence may be given of the shape of a wound given to another person by the prisoner at the same time, although such wound be the subject of another indictment. *R. v. Fursey*, O. B. S. 6 C. & P. 81. *Gaselee, J. and Parke, J.*

Where more than one offence proveable. Identity.

So where upon an indictment for felony, a matter which was the subject of another indictment for felony, was essential to the chain

Evidence, IV. (Relevancy.)

of facts necessary to make out the case, both felonies being parts of one transaction, the subject matter of the other indictment may be given in evidence without abandoning such other indictment. *R. v. Salisbury*, 5 C. & P. 155. *Patteson, J.*

But in a previous case tried before the same learned judge, where the prisoners were indicted under 9 G. 4. c. 69. for being armed upon lands for the purpose of taking game, upon the occasion in question, an affray took place between the prisoners and some gamekeepers, during which one of the game keepers lost his coat, which was afterwards found in the house of one of the prisoners. An objection was taken to the reception of the evidence, there being a separate indictment for stealing the coat, and the learned judge refused to receive the evidence, unless the prosecutor would consent to an acquittal on the indictment for larceny. *R. v. Westwood and others*, 4 C. & P. 547. *Patteson, J.*

Guilty know-
ledge.

Page 463. § 5.—Upon an indictment for receiving stolen goods, evidence may be given of other stolen goods of the prosecutor's having been found in the possession of the prisoners for the purpose of proving their guilty knowledge. *R. v. Davis and another*, 6 C. & P. 177. *Gurney, B.*

Guilty intent.

Page 463. § 6.—So upon an indictment for robbery, it appeared that the prisoners went with a mob to the prosecutor's house, and one of the mob advised the prosecutor to give them something to get rid of them and prevent mischief, and he in consequence gave them the money which was the subject of the indictment. It was held that in order to show that this was not *bond fide* advice, evidence might be given of demands of money made by the same mob, and what was done by them at other places, both before and afterwards during the course of the same day, where any of the prisoners were present. *R. v. Winkworth and others*, 4 C. & P. 444. *Parke, J.* after conferring with *Vaughan, B.* and *Alderson, J.* and afterwards approved of by Lord *Tenterden, C. J.*

And where the prisoner had set fire to the hay ricks of *O. N. & G.* one immediately after the other, and there was a separate indictment for each burning, the indictment for the last burning was tried first, and evidence was admitted respecting the whole of the three cases, as constituting part of the same transaction. *R. v. Charlotte Long*, 6 C. & P. 179. *Gurney, B., S. P.* *R. v. Wm. Mogg*, 4 C. & P. 364. *Park, J.*

Uttering coun-
terfeit coin.

In a case for uttering counterfeit coin, in order to prove the guilty knowledge, the prosecutor may give evidence of the possession of other counterfeit coin, four days subsequent to the uttering. *R. v. John Harrison*, *Lancaster Spring Assizes*, 1834. *Taunton J.*, after conferring with *Alderson, J.* *MS.*

Page 464. § 9.—If a prosecutor give in evidence a declaration made by a prisoner exculpating himself, the jury are not bound to take this to be true, merely because it is part of the prosecutor's evidence. But they ought to consider how far it is consistent with the rest of the evidence, and whether they believe it to be really true. *R. v. Steptoe*, *O. B. S.*, 4 C. & P. 397.

Excise.

Page 467.

By the 2 & 3 W. 4. c. 16. s. 15. Every officer of excise who shall deliver out or suffer to be delivered out any paper prepared, or provided, or appointed by the commissioners of excise to be used for permits in blank, or before such permit shall be filled up and issued agreeable to and in conformity with a request note; and every officer who shall knowingly give or grant any permit to any person not entitled to receive the same, or shall knowingly give or grant any false or untrue permit, or shall make any false or untrue entry in the counterpart of any permit given or granted by him, or shall knowingly or wilfully receive or take any goods or commodities into the stock of any person or persons brought in with any false or untrue or fraudulent permit, or shall knowingly or willingly grant any permit for the removal of any goods or commodities out of or from the stock of any person or persons who shall have received or retained such goods or commodities, or any of them, under or by virtue or pretext of any false, untrue, forged, or fraudulent permit, or shall knowingly or willingly give any false credit in the stock of any person or persons beyond the credit to which such stock is justly and truly entitled, as to enable such person or persons falsely and fraudulently to obtain a permit or permits; or if any such officer shall knowingly or willingly suffer the same to be done directly or indirectly, every officer so offending in any of the cases aforesaid shall be guilty of a misdemeanor; and, on conviction, shall be punished with fine and imprisonment, or fine, or imprisonment; and shall, from thenceforth, be incapable of holding any office or place relating to any of the revenues of the United Kingdom.

Officers delivering out false permits, &c.

Misdemeanor punishment.

See the 4 & 5 W. 4. c. 51., for amending 7 & 8 G. 4. c. 53. relating to the collection and management of excise duties.

See *ante*, page 1442, and *Forgery*, III. 2. *F. (b) post*, p. 1615.

Excommunication.

Page 470. § 4.—A party in the custody of the marshal of the Marshalsea, being brought into court, may be charged with a writ *de contumace capiendo*, under the provisions of the 53 G. 3. c. 127. *R. v. Bailey*, 9 B. & C. 67.

De contumace capiendo.

Execution.

Page 471.

In order to have execution done upon the bodies of prisoners convicted of murder, the court of King's Bench will, as of course, upon the application of the attorney general, grant a writ of *habeas*

Fairs.

corpus to bring up the prisoners, and also a *certiorari* to remove the record of the conviction and judgment. *R. v. Garside and Mosley*, 2 A. & E. 266., and see the authorities there cited.

And in that case the court awarded execution to be done upon the prisoners by the marshal of the marshalsea, and that the sheriff of the county of *Surrey* should assist the marshal in doing the execution. *Id.*

And in the same case the court refused to hear an application from the sheriff of *Middlesex*, (into whose custody the prisoners had been removed,) praying that the order to do execution might not be made upon him. *Id.*

Extortion.

Page 474. § 4.

What amounts
to.

Where a collector of the post-horse duty demanded of A. a sum of money, alleging that A. had let out horses for hire, without payment of the duty, which A. denied; but, being threatened by the defendant with an Exchequer process, he gave him a promissory note for 5*l.*, which was afterwards paid to the defendant, and the proceeds handed over by him to his principal, the farmer of the post-horse duties; under these circumstances, it was held by *Vaughan, B.* that the taking of the note by the defendant, and the receipt of the amount when due either as a mitigated penalty or otherwise without a return made, and without authority from any magistrate, or other person intervening,—amounted in law to extortion; and the defendant was accordingly found guilty. *R. v. Higgins*, 4 C. & P. 247. *Vaughan, B.*

Fairs.

Page 476.

Regulations as
to hours of
holding.

1. By 3 & 4 W. 4. c. 19. s. 22. at all fairs held within ten miles of *Temple Bar*, all business and amusements shall cease at eleven in the evening, and not recommence earlier than six in the morning; and that if any house, shop, room, booth, standing, tent, caravan, waggon, or other place, shall during the fair be open within the prohibited hours, for any purpose of business or amusement, in the place where the fair shall be held, or within three hundred yards thereof, any constable or peace officer, within his jurisdiction, may take into custody the master, or mistress, or other person having the care, government, or management of any such house, or other place; and also every person being therein, and who shall not quit the same forthwith upon being bidden so to do, and convey such person before a justice of the peace, who shall hear the complaint in a summary way. And every person convicted as the master, &c. of the place, shall forfeit 5*l.*, and every one convicted, as having been therein, and not having quitted the same forthwith upon being bidden by a constable to do so, shall forfeit 40*s.*—

and in default of payment, in either case, the offender may be committed to hard labour for not more than three months, nor less than six days, unless the penalty is sooner paid.

2. By the *same section* it is provided, that if there shall appear to any two justices reason to believe that any such fair has been held without charter, prescription, or other lawful authority, or that any lawful fair has been usually held for a longer period than is warranted by law; they may summon the owner or occupier of the ground upon which such fair is usually held, to appear before a petty sessions not less than eight days after the service of the summons, to shew his right and title to hold such fair, or to hold the same beyond a given period (as the case may be); and in default of his attendance, or not shewing sufficient cause, the justices shall declare in writing such fair to be unlawful, either altogether, or beyond a stated period (as the case may be), and shall give notice of such declaration, by affixing copies thereof on the parish church, and on the most public places in and near the ground where the fair has been usually held. And if, after such notices shall have been affixed for six days, any attempt shall be made to hold the fair, or to hold it beyond the prescribed period, any justice may by his warrant direct any constable or other peace officer to remove every booth, carriage, &c. upon such ground, for the purpose of such fair, and to take into custody every person erecting or assisting to do so, any booth, &c. or driving, &c. in such carriage, or resorting to such ground with any exhibitions, &c. and to carry every person so taken before the justice granting the warrant, or some other justice, who shall hear the complaint in a summary way. And every person convicted of any such offence shall forfeit not more than 10*l.*, and in default of payment, be committed to hard labour not exceeding three months, unless the penalty is sooner paid.

Proceedings
for putting
down illegal
fairs.

3. But by the *same section* it is also provided, that if the owner or occupier of the ground, when summoned before the petty sessions, shall enter into a recognizance in 200*l.*, to appear in the Court of King's Bench on the first day of the then next term, and to answer to any information in the nature of a *quo warranto*, by the Attorney or Solicitor-General, touching the right and title to hold such fair, and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court; then, the justices shall forbear from giving such notice, &c. until judgment shall be given by the said Court against the right and title to such fair;—the justices to transmit recognizance to the secretary of state, to be filed in the said Court, and that such further directions may be given thereon as the secretary of state may think fit.

Proviso as to
trying the right
by *quo war-
ranto*.

False Personation.

Page 476.

By *sect. 19. of the 2 & 3 W. 4. c. 59., (relating to life annuities granted by the commissioners for the reduction of the national debt,)* if any person shall wilfully, falsely and deceitfully personate any true and real nominee and nominees with intent to defraud his Majesty or any person or persons whomsoever, he shall be guilty of felony and suffer death.

Nominees of
life annuities.

False personating any officer or soldier.

By sect. 49. of the 2 & 3 W. 4. c. 53., (relating to the payment of army prize money,) if any person shall knowingly and willingly personate or falsely assume the name or character, or procure any other person to personate or falsely assume the name or character of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served or be supposed to have served in his Majesty's army or in any other military service, or shall personate or falsely assume, or act, aid, or assist in personating or falsely assuming the name or character, or procure any other person to personate or falsely assume the name or character of the executor or administrator, wife, widow, next of kin, relation, or creditor of any such officer, non-commissioned officer, soldier, or other person as aforesaid, in order to receive or to enable any other person to receive any prize money, grant, bounty money, share, or other allowance of money due or payable or supposed to be due or payable for or on account of any service performed or supposed to have been performed by any such officer, non-commissioned officer, soldier, or other person as aforesaid, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate; every person so offending shall be guilty of *felony*, and shall be transported for life or not less than seven years.

Felony.

Punishment.

Felo de se.

Page 478.

Accessory before the fact.

If a woman takes poison with intent to procure miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not, and the person who furnished her with the poison for that purpose will, if absent when she took it, be an accessory before the fact only. *R. v. Henry Russell, R. & M. C. C. 356.*

Not triable.

An accessory before the fact to the crime of self-murder was not triable at common law, because the principal could not be tried, and he is not now triable under 7 & 8 G. 4. c. 64. s. 9. *Ib.*

Vide title Accessory, ante, page 1486.

Fine.

Page 483.

Repeal of 22 & 23 Car. 2. c. 22.

By the 3 & 4 W. 4. c. 99. s. 22. so much of the 22 & 23 Car. 2. c. 22. (made perpetual by 4 & 5 W. & M. c. 24.) as requires all fines, forfeitures, issues, amerciaments, forfeited recognizances, sum and sums of money paid in lieu and satisfaction of them or any of them in the courts of king's bench, common pleas, or exchequer, or by or before any judge of assize, clerk of the market or commissioners of sewers, to be certified and estreated into the court of exchequer twice in every year, yearly at the times thereby appointed, are repealed.

By *sect. 23.* The clerk of parliament shall, within fourteen days after every session, make an account of all fines set or imposed, and also of all recognizances ordered to be estreated, by the house of lords during the preceding session, and distinguishing such fines as have been received,—and transmit the same to the commissioners of the treasury, and a duplicate to the commissioners for auditing public accounts,—and also certify and estreat all such fines not received in and into the court of exchequer.

Clerk of parliament to return to Treasury, &c. an account of fines set in the House of Lords, and estreat same into Exchequer; and pay over fines received.

By *sect. 24.* All fines received by the clerk of parliament shall be paid by him, and in such manner as the commissioners of the treasury shall by warrant direct.

By *sect. 25.* The clerk of the house of commons shall, within fourteen days after every session, make an account of all recognizances certified by the speaker or estreated by him into the exchequer, and transmit the same to the treasury, and a duplicate to the commissioners for auditing public accounts.

Clerk of House of Commons to make return of recognizances to Treasury, &c. Account of fines in the Courts at Westminster to be transmitted to Treasury, &c. on the first day of term.

By *sect. 26.* The King's coroner and attorney of the court of king's bench, the prothonotaries of the court of common pleas, and the remembrancer of the court of exchequer, and also the masters and prothonotaries of the office of pleas in the same court, respectively, shall on the first day of every term make out an account of all fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of his Majesty in the said courts respectively, and not before estreated, with the names and residences of the parties, and distinguishing such as shall have been paid, and transmit the same to the treasury, and a duplicate thereof to the commissioners for auditing public accounts.

By *sect. 27.* The coroner and attorney of the court of king's bench, the prothonotaries of the court of common pleas, and the prothonotaries of the office of pleas, and King's remembrancer, respectively, shall on the first day of every term, and at such other time or times as they shall respectively be ordered or required so to do by any order of the said courts respectively, or by the order of any judge or baron thereof, certify and estreat all such fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited as aforesaid, and not received by them respectively, in and into the said court of exchequer.

And unpaid fines to be estreated on the first day of term, or when ordered by the court.

By *sect. 28.* All such fines, amerciaments, penalties, and recognizances, which shall be received by any of the said officers of the said courts, shall be paid by them respectively, in such manner as the treasury shall by warrant direct.

Fines, &c. received to be paid as Treasury shall direct.

By *sect. 29.* An account in writing of all fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of his Majesty by or before any judge or judges of assize, clerk of the market, or commissioners of sewers, and also all deodands found or forfeited to or for the use of his Majesty, shall, within 14 days next after any such fines, issues, amerciaments, penalties, recognizances, or deodands shall respectively be set, lost, imposed, forfeited, found, or accrue, be made out by the clerk of assize, clerk of the market, commissioners of sewers, and coroners, or other person or persons respectively to whom it doth appertain or belong to make estreat thereof, with the names and residences of the parties liable to make payment thereof respectively, and distinguishing such as shall have been paid or received; and two copies of such

Account of fines, &c. before judges of assize, commissioners of sewers, clerks of the market, and also of deodands, to be transmitted to the Treasury and to auditors of public accounts.

account when so made out shall be signed by the person or persons so required to make out the same, who shall, within the time last aforesaid, transmit one copy thereof to the treasury, and another copy thereof to the commissioners for auditing public accounts; and the same fines, issues, amerciaments, penalties, recognizances, and deodands shall also within the time last aforesaid be duly certified and estreated by such officers and persons respectively in and into the court of exchequer; and all sum and sums of money received for or on account of any such fines, &c. shall be paid unto the sheriff or sheriffs of the county, city, or town wherein the same shall have been set, &c. such sheriff or sheriffs to be charged therewith, and account for the same.

Any oath required upon the estreat of fines may be taken before a judge, &c.

Estreat to be filed without fee.

The remembrancer to transmit accounts of estreats to Treasury and auditors of public account.

Process to be issued every term, or oftener, to levy estreats.

Power to Treasury to stay process, and discharge the fines, &c.

Power to persons entitled to any fines, &c. to inspect accounts.

By *sect. 30.* In all cases where any fines, issues, recognizances, penalties, forfeitures, or deodands are required by any act or acts now in force to be estreated, upon oath, in or into the court of exchequer, such oath may be sworn before a judge of any of the courts at *Westminster*, or any commissioners for taking affidavits in the same courts, or any master extraordinary in chancery, or any justice of the peace; and every such estreat shall be transmitted to and filed with his Majesty's remembrancer of the court of exchequer, and received and entered by him without fee or reward.

By *sect. 31.* His Majesty's remembrancer shall, on or before the first seal day next after every term, make an account of all fines, issues, amerciaments, penalties, forfeited recognizances and deodands, estreated during the preceding vacation and term, and also of all returns of sheriffs to process issued for the purpose of levying any estreated fines, &c. and shall transmit one copy of such account to the treasury, and another copy to the commissioners for auditing the public accounts.

By *sect. 32.* His Majesty's remembrancer shall, on the first seal day after every term, and at any other time when required by the court of exchequer, or by order of a baron thereof, make out and issue, according to the practice of the court of exchequer, and without fee or reward, process for duly levying and enforcing payment of all such fines, issues, amerciaments, penalties, forfeited recognizances, and deodands estreated as aforesaid (except as therein-after mentioned), which shall not theretofore have been levied, recovered, vacated, or discharged, and so from time to time until the same shall be fully paid or levied, vacated or discharged.

By *sect. 33.* The commissioners of the treasury are authorized by warrant, to stay the issuing or execution of process touching any of the matters set, lost, imposed, forfeited, or estreated as aforesaid, and to vacate and discharge such fines, issues, amerciaments, penalties, forfeited recognizances, or deodands, or any of them, or any part thereof; provided that nothing in that clause contained should extend to enable the commissioners of the treasury to remit or restore any fine, &c. to which any body corporate or politic, person or persons, should or may be entitled, which should have been actually levied by or paid to them.

By *sect. 34.* All bodies corporate and politic, and persons having or claiming title to any fines, &c. contained in any account transmitted by virtue of that act to the commissioners for auditing public

accounts, may, by themselves, or their agent, at all seasonable times, have access to the said accounts, and take minutes or extracts therefrom.

By *sect. 35.* The commissioners of the treasury may by warrant order and direct payment of the said fines, &c. to any body corporate or politic, person or persons entitled to the same, or to their agent: Provided, that notwithstanding such payment any body politic or corporate, person or persons aggrieved thereby, shall and may apply by petition in the manner therein-after mentioned against the party or parties to whom such payment shall have been made, to restore or refund the sum or sums by him or them so received.

The Treasury may order payment of fines, &c. to persons entitled.

By *sect. 36.* In case the commissioners of the treasury shall neglect, refuse, or decline to order the payment of any fines, issues, amerciaments, penalties, forfeited recognizances, deodands, sum or sums of money so claimed as aforesaid, or if any party shall be aggrieved by any order made by the said commissioners, it shall be lawful for any such body or bodies corporate or politic, person or persons, to apply, in a summary way, by petition to the lord chief baron and the other barons of his Majesty's court of exchequer, setting forth the nature of the claim or title of the petitioners or petitioner; and thereupon the said barons of his Majesty's court of exchequer shall and they are thereby authorized to proceed to call the proper parties before them, and to hear and determine the matter of the said petition, and to give such costs and to make such order and orders therein as they shall deem just.

If Treasury reject claims, the party may appeal to the Court of Exchequer.

By *sect. 37.* Nothing in the act shall be prejudicial to the rights, privileges, and remedies of bodies politic or corporate, or any lord of any manor, liberty, or franchise, or any person or persons, claiming title under any grant from the crown.

Act not to prejudice rights of corporate bodies, &c.

By *sect. 38.* Nothing in the act shall affect the power, jurisdiction, or authority of the lord chief baron and the other barons of the court of exchequer as to the said fines, issues, amerciaments, penalties, forfeited recognizances, and estreats, or any process or proceedings thereon.

This act not to affect jurisdiction of Court of Exchequer.

By *sects. 39. & 40.* The act shall not prejudice the rights, &c. of the King in the county palatine of *Lancaster* or duchy of *Cornwall*, or the duke of *Cornwall*, or the rights, &c. of the bishop of *Durham* and the county palatinate of *Durham*, or the rights, customs, &c. of the city of *London*, or the rights, &c. of the city and county of the city of *Chester*.

Act not to affect rights of counties palatine or of cities of London or Chester.

Fish and Fish-ponds.

Page 488.

On an indictment for taking fish in a private fish-pond,—though there must have been some evidence to negative the owner's consent,—yet it was held, that the owner need not be called for that purpose, and that his non-consent might be inferred from other circumstances, as proved by his agents. *R. v. Argent, and R. v. Chamberlain, Ry. & M. C. C.* 154.

As to proof of non-consent of owner.

Forcible Entry and Detainer.

I. What is a forcible Entry.

Constable present to prevent a breach of the peace, &c.

Page 493. § 11 & 12.—If a constable be present when a house is entered by force, for the purpose of preventing a breach of the peace, he cannot be convicted of a forcible entry. Nor if he be present for the purpose of taking a person into custody, who might be found in the house. *R. v. Eliza Smyth and others*, 5 C. & P. 201. *Lord Tenterden, C. J.*

But it would be otherwise if the constable went for the purpose of increasing the show of force. *Id.*

Mere trespass not sufficient.

“An indictment for a forcible entry cannot be supported by evidence of a mere trespass; but there must be a proof of such force, or at least such a show of force as is calculated to prevent any resistance.” *Id.*

Forcible entry by a wife into her husband's house.

If a married woman take a house separately from her husband, in point of law it must be taken to be his house; but a wife has a right to enter the house of her husband. Although a wife cannot be guilty of a mere trespass by entering the house of her husband, yet if she come with violence and the strong hand, or at least with such a show of force as to prevent any resistance, she would be guilty of a forcible entry. *Id.*

II. What is a forcible Detainer.—Page 493.

Preceding entry.

The stat. 8 Hen. 6. c. 9. gives magistrates a summary jurisdiction in cases of forcible detainer, preceded by a *peaceable*, but an *unlawful* entry. A conviction, under this statute, for a forcible detainer, stating merely that the defendant “did enter,” and not alleging that the entry was unlawful, is insufficient. *R. v. Oakley*, 4 B. & Ad. 307.

Holding over by tenant at will—*quare*.

Whether a holding over by tenant-at-will, or for years after determination of the will, or expiration of the term, amounts, in judgment of law, to a new (and if so, *semble* an unlawful) entry—*quare*. *Id.*

By the statute the justices are left to ascertain the fact of forcible detainer upon their own view, and they are not bound to set out any evidence. *R. v. Wilson*, 1 A. & E. 627.

In a case of summary conviction by two justices, under 8 H. 6. c. 9. of a forcible detainer, upon their own view, it was not sworn that any evidence was received by the justices on the view, and the court of King's Bench refused a *mandamus* to the justices to amend their return to a *certiorari*, by stating the evidence given before them, and the facts touching the conduct of the defendant upon the view. *Id.*

III. Indictment, Plea, and Restitution.

Averment of seisin.

Page 494. § 2.—Where the indictment charged, that the defendant into one messuage, &c., then and there being in the possession of W. P., “he, the said W. P., then and there being also seised thereof,” with force and arms did enter, &c.; this was held, after conviction, a sufficient averment of the present seisin of W. P., so as to warrant

the Court in awarding a writ of restitution. *R. v. Hoare*, 6 M. & S. 266.

Page 495. s. 6.—Upon the trial of an indictment for forcible entry, the tenant, whose land has been entered upon, is not a competent witness. *R. v. Williams*, 9 B. & C. 459. Witness.

Forgery.

By 2 & 3 W. 4. c. 123. s. 1. Persons convicted of any offence whatsoever, for which the 11 G. 4. and 1 W. 4. c. 66. enjoins or authorizes the infliction of the punishment of death, shall not suffer death, but shall be transported for life.

But by *sect. 2.* this does not extend to any person convicted “of forging, or altering, or of offering, uttering, or disposing of, knowing the same to be forged or altered, any will, testament, codicil, or testamentary writing,” with intent, &c. to defraud any person; “or of forging or altering, or of uttering, knowing the same to be forged or altered, any power of attorney, or other authority, to transfer any share or interest of, or in any stock, annuity, or other public fund, which now is, or hereafter may be transferable at the Bank of England, South Sea House, or at the Bank of Ireland, or to receive any dividend, payable in respect of any such share or interest,” with intent to defraud any person; “or of procuring, aiding, or assisting in the commission of any of the said offences;” but the punishment for such offences to continue the same.

And by the 3 & 4 W. 4. c. 44. s. 3. all persons punishable by transportation for life, under the above act of 2 & 3 W. 4. c. 123. shall be liable, previously to their being transported, to be imprisoned, with or without hard labour, in the common gaol or house of correction, or to be confined in the penitentiary, not exceeding four years, nor less than one year.

I. False making, uttering, &c.

Page 1399. § 6.—Where a person presents a bill of exchange for payment with a forged indorsement upon it of a receipt by the payee; and the person to whom it is presented objects to pay the bill on account of a variance between the spelling of the payee’s name in the bill, and in the indorsement. Upon which the person presenting the bill alters the indorsement into a receipt by himself. Mr. Justice *Vaughan* said, he had no doubt that this was sufficient to constitute an uttering of the forged indorsement, but Mr. Justice *Littledale* and Mr. Baron *Bolland*, (who were present) did not express any opinion. *O. B. S. R. v. Arscott*, 6 C. & P. 408. Uttering a forged indorsement.

II. Of the fraudulent Intent. Page 1400.

Where a prisoner forged a cheque purporting to be drawn upon Messrs. *Berwick* of the *Worcester* old bank, and presented such forged cheque for payment at Messrs. *Rufford’s* bank at *Stourbridge*, it was held that such presentment was sufficient evidence of an intent to defraud Messrs. *Rufford*. *R. v. Crowther*, 5 C. & P. 316. *Bosanquet, J.* Evidence of intent.

III. *Of what Instruments Forgery may be committed.*

(c) Order for the payment of money.—p. 1407.

A cheque is both an order and a warrant within the stat.

A cheque upon a banker is both “an order and a warrant for the payment of money,”—a warrant authorizing him to pay, and an order for him to do so,—within the meaning of 11 G. 4. & 1 W. c. 66. s. 3. *R. v. Crowther*, 5 C. & P. 316. *Bosanquet, J.*

But an indorsement on a cheque is not.

It is no offence within the meaning of that statute to forge an indorsement upon “an order for the payment of money.” *R. v. Arscott*, 6 C. & P. 408. *Littledale, J. Vaughan, J. and Bolland, B.* But the instrument might have been described in the indictment as a bill of exchange, and if it had been so described, the indictment might have been sustained. *Id.*

(E) Acquittances and Receipts.

What is not a receipt.

Page 1411. § 2.—Where a prisoner had indorsed upon a forged bill of exchange, or order for the payment of money, “Received for *R. Aickman*,” (the payee mentioned in the bill) and signed his name “*G. Arscott* ;” this was held not to be a forged acquittance or receipt within the meaning of sect. 10. of the statute. *R. v. Arscott, O. B. S. 6 C. & P. 408. Littledale, J. Vaughan, J. and Bolland, B.*

What is a receipt.

Upon an indictment for forging and uttering a receipt for money, it appeared that the prisoner had forged an instrument purporting to be a receipt by the adjutant of the royal horse artillery, to Messrs. *Cox & Co.* paymasters of the regiment, for the sum of 20l. It also appeared that similar receipts were often treated as orders for the payment of money, and were frequently cashed by tradesmen, who afterwards received the money of the army agents. It was held that this was a receipt within the meaning of the act of parliament. *R. v. Samuel Rice*, 6 C. & P. 634. *Park, J.* And this point has been decided the same way by the judges in the case of *R. v. James Hope*, reserved for their consideration by *Tindal, C. J. Id. n. (a).*

(F) Order for the Delivery of Goods, &c.

Page 1415. § 3.—Forging a request for the delivery of goods, is a felony within the meaning of 11 G. 4. & 1 W. 4. c. 66. s. 10.—although it is not addressed to any one. *R. v. Ross Carney, R. & M. C. C. 351.*

See *R. v. Evans, Cheats, II. ante*, p. 1528.

(2.) *Of Public Papers, Instruments, Securities and Documents.*

(B) Relating to the public funds and government securities,—page 1417.

Forging declarations, warrants, &c.

By sect. 19. of the 2 & 3 W. 4. c. 59. (*relating to life annuities granted by the commissioners for the reduction of the national debt*), if any person or persons shall forge, counterfeit, or alter, or shall cause or procure to be forged, counterfeited, or altered, or shall knowingly or wilfully act or assist in the forging, counterfeiting, or altering any declaration, warrant, order, or other instrument, or any affidavit, or affirmation required to be made by that act, or by the commissioners for the reduction of the national debt, under any of

the provisions of that act, or under any authority given to them for that purpose, or shall forge, counterfeit, or alter or shall cause or procure to be forged, counterfeited, or altered, or shall knowingly or wilfully act or assist in the forging, counterfeiting, or altering, any certificate, or order, of any officer of the commissioners for the reduction of the national debt, or the name or names of any person or persons in or to any transfer of any annuity, or in or to any certificate, order, warrant, or other instrument for the payment of money for the purchase of any annuity under the provisions of that act, or, in or to any transfer or acceptance of any such annuity in the books of the commissioners for the reduction of the national debt, or in or to any receipt or discharge for any such annuity, or in or to any receipt or discharge for any payment or payments due or to become due thereon, or in or to any letter of attorney or other authority or instrument to authorize, or purporting to authorize the transfer, or acceptance of any annuities, or any life annuity of whatsoever kind, or authorizing, or purporting to authorize the receipt of any life annuity of whatsoever kind granted under any of the therein recited acts or that act, or any payment or payments due, or to become due thereon, or shall wilfully utter or deliver, or produce to any person or persons acting under the authority of that act, any forged register or copy of register of any birth, baptism, or marriage, or any forged declaration, affidavit, or affirmation, knowing the same to be forged, counterfeited, or altered, with intent to defraud his majesty, or any person or persons whomsoever, every person so offending, shall be guilty of felony, and suffer death.

Felony.
Death.

(E) *Foreign Securities.*

Page 1429. § 4.—Uttering in *England* (in April, 1830,) a forged note, purporting to be a note of the bank of *Ireland*, was an offence previous to the passing of the 11 G. 4. & 1 W. 4. c. 66. under the then existing statutes, the 2 G. 2. c. 25. s. 4. 43 G. 3. c. 139. s. 1. and 45 G. 3. c. 89. s. 1. *R. v. James Kirkwood, R. & M. C. C.* 311.

(F) *Of Instruments relating to the Public Revenue.*

(a) Relating to stamps, p. 1430.

By the 3 & 4 W. 4. c. 97. s. 12. "If any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument which at any time whatever hath been or shall or may be provided, made, or used, by or under the direction of the commissioners of stamps, for the purpose of expressing or denoting any stamp duty whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper, having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for, the stamp, mark, or impression of

Persons knowingly having forged stamps or dies in their possession ;

or fraudulently
fixing old
stamps ;

or erasing
names, &c.
with intent to
use the stamps
again ;

or using any
stamped parch-
ment so erased.

Felony.
Punishment.

Fraudulently
tearing off a
stamp with in-
tent to use it
upon another
piece of parch-
ment.

any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit,—or if any person shall fraudulently use, join, fix, or place for, with, or upon any vellum, parchment, or paper, any stamp, mark, or impression which shall have been cut, torn, or gotten off or removed from any other vellum, parchment or paper ; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment, or paper any name, sum, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark, then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any stamp duty is or shall or may be or become payable, or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper from or off or out of which any such name, sum, date, or other matter or thing as aforesaid, shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid ; then and in every such case every person so offending and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted shall be adjudged guilty of felony, and shall be liable, at the discretion of the court to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Sect. 13.—Upon information, on oath, a justice may issue his warrant to search the houses of suspected persons, and to seize dies, &c., found therein.

A prisoner was indicted under 55 G. 3. c. 184. s. 7. for tearing a stamp off one piece of parchment with the intent to use the same upon another parchment.

It appeared that the prisoner was a clerk at the stamp office in the allowance department, and it was his duty to cut off the corners of parchments on which the stamps allowed for, as spoiled, were impressed, and put them into the fire. The prisoner had obtained possession of two of these corners having 25*l.* stamps upon them and transferred them to other pieces of parchment. There was no evidence to shew when the stamps had been impressed, and it appeared that the same 25*l.* stamp was used both before and after the passing of the 55 G. 3. c. 184. The jury found the prisoner guilty, and in answers to questions by the court, stated,—1st, That they could not say whether the impressions were made or issued before or after the passing of the 55 G. 3. c. 184. 2nd, That the prisoner had no fraudulent intention at the time he cut the pieces to which the stamps had been impressed from the spoiled parchments. 3rd, That he had a fraudulent intention when he detached the pieces of blue paper bearing the impressions of the stamp, from the pieces of parchment so cut off. 4th, That he had the intention of using them for parchment to be employed as indentures. The case was afterwards submitted to the judges and they were unanimously of opinion that the conviction was right. *R. v. George Smith, R. & M. C. C. 314. S. C. 5 C. & P. 107.*

(b) Customs and Excise.

Page 1441. § 2.—The 3 & 4 W. 4. c. 50. repeals the 6 G. 4. c. 106.

And by 3 & 4 W. 4. c. 51. s. 27. "If any person or persons shall knowingly and wilfully forge or counterfeit, or cause to procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging or counterfeiting, the name or handwriting of any receiver general of the customs, or of any controller general of the customs, or of any person acting for them respectively as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of England, on account of the receiver general of the customs, or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting, any draft, instrument, or writing in form of a draft made by such receiver general or person as aforesaid; or shall utter or publish any such knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever; every person so offending shall be guilty of felony, and shall be transported for life.

Customs.

Forging the hand-writing of receiver-general of the customs, &c.

**Felony.
Punishment.**

And by 3 & 4 W. 4. c. 52. s. 55. "If any person shall forge or counterfeit any mark or stamp provided by the commissioners of the customs and used for stamping goods, or the impression of any such mark or stamp, or shall sell or expose to sale, or have in his custody or possession, any goods with a counterfeit mark or stamp, knowing the same to be counterfeit, or shall use or affix any such mark or stamp to any other goods required to be stamped other than that to which the same was originally affixed, every such offender and his aiders, abettors, and assistants, shall for every offence forfeit 200*l*.

Forging custom-house stamps.

Penalty.

Excise.—p. 1442.

By the 2 & 3 W. 4. c. 16. s. 3. Every person who shall make, or cause or procure to be made, or shall aid or assist in the making, or shall knowingly have in his, her, or their custody or possession, not being authorized by the said commissioners and without lawful excuse, the proof whereof shall lie on the person accused, any mould or frame, or other instrument, having therein the words "excise office," or any other words, figures, marks, or devices peculiar to and appearing in the substance of the paper used by the said commissioners for permits, or with any or part of such words, figures, marks, or devices, or any of them, intended to imitate or pass for the same; and every person, except as before excepted, who shall make, or cause or procure to be made, or aid, or assist in the making, any paper in the substance of which the words "excise office," or any other words, figures, marks, or devices peculiar to or appearing in the substance of the paper used by the commissioners of excise for permits, or any part of such words, figures, marks, or devices, or any of them intended to imitate and pass for the same, shall be visible; and every person except as before excepted, who shall knowingly have in his, her, or their custody or possession, without lawful excuse, (the proof whereof shall lie on the person accused) any paper whatever in the substance of which the words "excise office," or any other words, figures, marks, or devices peculiar to and appearing in the substance of paper used by the commissioners of excise for permits, or any part

Unauthorized persons making paper in imitation of excise paper, and persons forging or counterfeiting plates or types.

Forgery, III. (*Post Office.*)

of such words, figures, marks, or devices, or of any of them, intended to imitate and pass for the same, shall be visible; and every person except as before excepted, who shall, by any art, mystery, or contrivance, cause or procure, or aid or assist in causing or procuring, the words "excise office," or any other words, figures, marks, or devices peculiar to and appearing in the substance of the paper used by the commissioners of excise for permits, or any or part of such words, figures, marks, or devices, or any of them, intended to imitate and pass for the same to appear visible in the substance of any paper whatever; and every person, not authorized or appointed as aforesaid, who shall engrave, cast, cut, or make, or cause or procure to be engraved, cast, cut, or made, or aid or assist in engraving, casting, cutting, or making, any plate, type, or other thing in imitation of or to resemble any plate or type made or used by the direction of the commissioners of excise for the purpose of marking or printing the paper to be used for permits, and every person, except as before excepted, who shall knowingly have in his, or her, custody or possession without lawful excuse, proof whereof shall lie on the person accused, any such plate or type;" shall for every such offence be adjudged a felon, and shall be transported for seven years, or imprisoned any period not less than two years.

Felony.**Punishment.**

**Counterfeiting
permits or ut-
tering counter-
feited permits.**

And by *sect. 4.* "Every person who shall counterfeit or forge, or cause or procure to be counterfeited or forged, or assist in counterfeiting or forging, any permit, or any part of any permit, or shall counterfeit any impression, stamp or mark, figure or device, provided or appointed, or to be provided or appointed by the commissioners of excise to be put on such permit, or shall utter, give, or make use of any counterfeited or forged permit, knowing the same or any part thereof to be counterfeited or forged, or shall utter, give, or make use of any permit with any such counterfeited impression, stamp or mark, figure or device, knowing the same to be counterfeited; or if any person or persons, shall knowingly and willingly accept or receive any counterfeited or forged permit, or any permit with any such counterfeited impression, stamp or mark, figure or device thereon, knowing the same to be counterfeited," shall be guilty of a misdemeanor, and shall be transported for seven years, or fined and imprisoned at the discretion of the court.

**Misdemeanor.
Punishment.**

(c) Post office.—p. 1444.**Forging franks.**

By 2 & 3 W. 4. c. 15. s. 30. "If any person whatsoever shall forge or counterfeit the hand writing of any person whomsoever thereby authorized to frank any letters or packets, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage, or shall forge, counterfeit, or alter, or shall procure to be forged, counterfeited, or altered, the date of the superscription of any such letter or packet,—or shall write or send by the post, or cause to be written or sent by the post, any letter or packet, the superscription or cover whereof shall be forged or counterfeited, or the date upon such superscription or cover altered, in order to avoid the payment of the duty of postage, knowing the same to be forged, counterfeited, or altered, every person so offending shall be guilty of felony, and shall be transported for seven years."

Felony.**Punishment.**

(d) Relating to the land revenue, &c.—p. 1445.

By the 2 & 3 W. 4. c. 120. s. 32. If any person shall forge or counterfeit, or shall cause or procure to be forged, counterfeited, or resembled, any numbered plate directed to be provided, or which shall have been provided, made, or used in pursuance of that act, or of any former act relating to the duties payable in respect of stage carriages, or shall wilfully fix or place, or shall cause or permit, or suffer to be fixed or placed, upon any stage carriage or other carriage, any such forged or counterfeited plate, or if any person shall sell or exchange, or expose to sale, or utter any such forged or counterfeited plate, or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited plate, knowing such plate to be forged or counterfeited, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence as aforesaid, shall be guilty of a misdemeanor, and shall be liable to be punished by fine or imprisonment, or by both, such imprisonment to be in the common gaol or house of correction, and either with or without hard labour as the court shall think fit;—and it shall be lawful for any officer of stamp duties, or for any constable, or other peace officer, or any toll gate keeper, to seize and take away any such plate in order that the same may be produced in evidence against such offender, or be disposed of as the commissioners of stamps shall think proper.

Forging stage-carriage plates.

Misdemeanor Punishment.

Forged plates may be seized.

(F) Of Public Documents relating to the Government generally.

(a) Seamen, navy pay, &c.—p. 1447.

By the 2 & 3 W. 4. c. 40. s. 32. If any person shall forge, or falsely make any certificate to be given under the authority of that act by the commissioners for executing the office of Lord High Admiral, or any of them, or by any superintendent of the purchase or sale of any naval or victualling stores, or shall utter or publish any false or altered certificate of any such purchase or sale, knowing the same to be false; or if any person shall take a false oath, or make a false affirmation, or give false evidence before any commissioner or commissioners for executing the office of lord high admiral aforesaid, or before any superintendent or inspector of seamen's wills, touching any matter which the said commissioners or any of them, or any superintendent or inspector, are or is authorized to inquire into, every such person, being duly convicted of any such offence or offences, shall be liable to suffer such punishment, pains, and penalties as persons guilty of wilful and corrupt perjury are by law subject to.

Forging certificates of the purchase or sale of stores.

Punishment.

And by the 5 & 6 W. 4. c. 24. s. 3. If any person shall forge or counterfeit any certificate, of service in his majesty's navy, or any instrument purporting to be a protection from such service, or shall fraudulently utter or publish any forged certificate of such service, or any forged instrument purporting to be a protection from such service, knowing the same to be forged, or shall fraudulently alter any certificate or protection which shall have been duly granted or issued; or if any person shall forge or fraudulently alter any extract

Punishment for forgery,—any certificate or protection from service.

Forgery, III. (Soldiers, &c.)

from a baptismal register; or shall knowingly utter any false or fraudulently altered extract from a baptismal register, or any false affidavit, certificate, or other document, in order to obtain from the admiralty office a protection from his majesty's naval service for himself or any other person; or if any person being in the possession of a protection, shall lend, sell, or dispose thereof to any other person, in order fraudulently to enable such other person to make an unlawful use of the same, or if any person shall produce, utter, or make use of as a protection for himself, any protection which shall have been made out or issued for any other individual; every person in any such manner offending, shall be deemed guilty of a misdemeanor, and such protection shall thenceforward be null and void.

Misdemeanor.

(b) Soldiers, Chelsea Pensioners, &c.—p. 1455.

Forging the hand-writing of officers, soldiers, &c. entitled to prize money.

By the 2 & 3 W. 4. c. 53. s. 49. If any person shall forge or counterfeit, or alter, or cause or procure to be forged or counterfeited, or altered, or knowingly and willingly act or aid, or assist in forging or counterfeiting or altering the name or handwriting of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any prize money, grant, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable for, or on account of any service performed, or supposed to have been performed by any officer, non-commissioned officer, soldier, or other person who shall have really served, or be supposed to have served in his majesty's army, or other military service, or the name or handwriting of any officer, or under officer, clerk, or servant of, or in the employ of the commissioners of the royal hospital at *Chelsea*, or the name or handwriting of any officer, or person in any way concerned in the paying, or the ordering, directing, or causing the payment of any such prize money, grant, bounty-money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, or shall falsely make, forge, counterfeit, or alter, or willingly act, aid or assist in the false making, forging, counterfeiting, procuring, or altering any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever relating to, or in anywise concerning the payment of, or the obtaining or claiming any such prize money, grant, bounty-money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, in order to receive, obtain, or claim any such prize money, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, or shall utter or publish as true, or knowingly and willingly act or aid or assist in uttering or publishing as true, any falsely made or forged, or counterfeited or altered letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, authority, document, or writing whatsoever, with intention to receive, obtain, or claim, or to enable any other person to receive, obtain, or claim from the said commissioners of the said royal hospital, or from any officer, under officer, clerk, or servant of the said commissioners, or from any person whatsoever authorized, or supposed to be authorized to pay the same, the payment of any such prize money, grant, bounty money, share, or other allowance of

money due, or payable, or supposed to be due or payable as aforesaid, with intention to defraud any person or persons whatsoever, or any body or bodies politic or corporate whatsoever, or shall knowingly take a false oath in order to obtain letters of administration, or the probate of any will in order to receive, obtain or claim, or to enable any other person to receive, obtain, or claim any prize money, grant, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable for or on account or in respect of the service of any officer, non-commissioned officer, soldier, or other person as aforesaid, who shall have really served, or be supposed to have served in his majesty's army or other military service, or shall demand or receive any prize money, grant, bounty money, share, or other allowance of money due or payable, or supposed to be due or payable as aforesaid, upon letters of administration, or a probate of a will, knowing the will on which such probate shall have been obtained to be false, forged, or counterfeited, or knowing such letters of administration or the probate of such will as last aforesaid, to have been obtained by means of any such false oath, with intention to defraud any person or persons or any body or any body or bodies politic or corporate whatsoever,—every person so offending shall be guilty of felony, and shall be transported for life, or not less than seven years.

Felony.
Punishment.

By the 2 & 3 W. 4. c. 106. s. 3. If any person or persons shall falsely make, forge, or counterfeit, or cause, or procure, to be falsely made, forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting of any authority, certificate, or bill of exchange, for the payment of any half-pay pension, allowance, &c., or shall utter, as true, any such false, forged, or counterfeited authority or certificate, or bill of exchange, knowing the same to be false, forged, or counterfeited, with intent to defraud any person or persons, body, or bodies politic or corporate, —every person, so offending, shall be guilty of felony, and shall be transported for seven years, or imprisoned not exceeding four years.

Forging certificate, bill of exchange, &c. for half-pay pension allowance, &c.

Felony.
Punishment.

(G) *Relating to other public Matters.*

(a) Records, judicial process, and proceedings.—page 1459.

In a case of an indictment (at common law) for forging a county court summons, it appeared that blank summonses were sometimes given out by the clerks in the county court office, to the attorneys to fill up for themselves, and that the defendant had filled up a blank form of a distringas, which he afterwards altered into a summons, and served it on the defendant, *but no entry of it had been made* in the county court books. The defendant was acquitted, but Mr. Justice *Patteson* said—"It is highly irregular; but I know that these summonses are sometimes given out in blank. I am not prepared to say, that after the notice that this trial will give parties, as to the impropriety of the practice, I should not hold that this mode of filling up a summons, or of altering a distringas into a summons, was forgery." *R. v. Robert Collier*, 5 C. & P. 160.

At common law.
County court process.

An indictment for an assault having been found against a person, he was committed to gaol until he should find sureties to appear at the sessions, or be otherwise discharged. The defendant forged a

A justice's letter to a gaoler.

Forgery, V. (*Indictment.*)

letter, purporting to be a letter from the magistrate to the gaoler, stating that persons had become surety for the defendant, and authorising his discharge. *Tindal, C. J.* held that the forging and uttering this letter was an indictable offence, and the fifteen judges afterwards confirmed that decision. *R. v. Robert Harris*, 6 C. & P. 129.

IV. *Of Accessories.*

Page 1465. § 6.—The case of *R. v. Bingley, R. & R. C. C.* 446. has been confirmed in two subsequent cases.

Several persons forging different parts in each other's absence.

If several persons make different parts of a forged instrument, each person is a principal, although he does not know by whom the other parts are to be executed, and although it is finished by one alone, in the absence of all the others. It is sufficient if he knows it is to be executed by somebody. *R. v. Robert Kirkwood and others*, R. & M. C. C. 304.

Ignorance of who accomplice is—immaterial.

And in another case, where one person made the paper, and another engraved the plate and printed the forms, for the purpose of making forged promissory notes, which were afterwards filled up by a third person, it was decided that they were all principals in the forgery, although each of them executed his part of the forgery in the absence of the others, and without knowing by whom the other parts were to be executed. *R. v. Jonathan Dade and others*, R. & M. C. C. 307.

V. *Indictment and Venue.*

Indictment need not set out a copy of forged instrument.

Page 1466. § 2.—By 2 & 3 W. 4. c. 123. s. 3. "In order to prevent justice from being defeated by clerical or verbal inaccuracies, it is enacted, that, in all informations or indictments for forging, or in any manner uttering any instrument, or writing, it shall not be necessary to set forth any copy, or fac-simile thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same; any law or custom to the contrary notwithstanding."

Where the meaning of the forged instrument must be averred.

Page 1468. § 11.—In an indictment under 11 G. 4. and 1 W. 4. c. 66. s. 10. for forging a request for the delivery of goods—if the forgery do not necessarily import on the face of it to be a request, but is merely so understood in trade, there must be an innuendo to explain it. And in a case where an indictment ought to have had such an innuendo, but had not, judgment was arrested. *R. v. Charles Cullen, R. & M. C. C.* 300. 5 C. & P. 116. S. C.

Difference between bill of exchange and acceptance.

Page 1469. — An indictment charged the prisoner in one count with uttering a forged bill, with intent to defraud, and in another with having had a bill in his possession with a forged acceptance on it, and uttering *the bill*, knowing the acceptance to be forged, with intent to defraud, &c. The proof was that the acceptance to the bill was forged, but there was no proof that the drawer's name was forged. It was objected that the prisoner could not be convicted on the first of these counts, because an acceptance is no part of a bill, within the meaning of 11 G. 4. & 1 W. 4. c. 66., that statute having made a distinction between a bill and an acceptance by using

both terms; and that the prisoner could not be convicted on the second of those counts, because it did not expressly aver that he uttered the forged acceptance, but only that he uttered the bill, knowing the acceptance to be forged. *Gurney, B.* after conferring with *Tindal, C. J.*, reserved these points for the consideration of the judges; and the prisoner having been convicted, the judges afterwards held the conviction wrong. *R. v. Horwell*, 6 C. & P. 148.

Where an indictment is preferred (under 11 G. 4. & 1 W. 4. c. 66. s. 24.) against a prisoner in the county in which he was apprehended, it is no objection that the day laid in the indictment is before the day the statute comes into operation, if the offence were in fact committed after that day. *R. v. Thomas Treharne the younger*, R. & M. C. C. 298.

Venue.

Page 1470. § 21.—Where a prisoner was indicted for uttering a forged request for the delivery of goods, with intent to defraud one *Thomas Barrow*, it appeared that the request was addressed to Miss *Inwood*, who had carried on business in her own name, previous to her marriage, and, before the uttering in question, had been married to the prosecutor; and it was held that the intent was properly laid in the indictment to be to defraud the husband. *R. v. John Carter*, 7 C. & P. Lord Denman, C. J. Park, J. and Bolland, B. C.C.C.

Description of the party intended to be defrauded.

Page 1472. § 26.—Where an indictment for forging and uttering, for offences committed after the passing of the 11 G. 4. & 1 W. 4. c. 66.—was drawn in the form used, before the passing of that act, it was held that the indictment was not bad for stating a great deal more than was necessary. *R. v. Brewer*, 6 C. & P. 363. Park, J.

As to stating the offence in the words of the statute.

VI. Evidence.

Page 1478. § 16.—In a case where a prisoner was indicted for forging a cheque purporting to be drawn by *G. A.* upon Messrs. *J. L. & Co.* It was proved that no person of the name of *G. A.* kept an account with Messrs. *J. L. & Co.*, or had any right to draw upon them. This was held to be *prima facie* evidence that *G. A.* was a fictitious person. *R. v. Backler*, 5 C. & P. 118. Parke, J. and Gaselee, J.

Fictitious person.

In a case where the prisoner was indicted for forging a bill of exchange, purporting to be drawn at *Nottingham* by *T. W.*, and to be accepted by "*S. K., Market-place, Birmingham*," the prosecutor proved that he went to *Nottingham* and made inquiries for a person of the name of *T. W.*; and also to *Birmingham*, and inquired for a person of the name of *S. K.*, but could not find such persons at these places. This was held to be *prima facie* evidence, that *T. W.* and *S. K.* were fictitious persons, but that it was neither satisfactory nor the usual evidence in such cases. *R. v. King*, O. B. S. 5 C. & P. 123. Parke, J.

Where a prisoner was indicted for forging and uttering a cheque, purporting to be drawn by *John Weston* upon Messrs. *Cox & Co.*, bankers and army agents, a person who was a clerk of Messrs. *Cox & Co.* in the army agent department, proved that the cheque was presented to him and he refused payment on the ground that no such person had an account with Messrs. *Cox & Co.* He also stated that

Friendly Societies.

he did not know all the customers of the house, but he did not know one of the name of *John Weston*, and he had inquired of all the clerks and was informed there was no such person in the banking department. This was held to be sufficient *prima facie* evidence, that there was no such person as *John Weston*, and to call upon the prisoner to shew that there was such a person having an account with Messrs. *Cox & Co.* *R. v. Brannan*, *O. B. S.* 6 *C. & P.* 326. *Park, J., Patteson, J., and Gurney, B.*

Subsequent uttering of other forgeries.

Page 1480. § 22. In a case where a prisoner was indicted for uttering a forged bill of exchange, *Alexander, C. B.* and *Gaselee, J.* were of opinion that evidence of the prisoner having subsequently uttered forged bills precisely similar, was admissible to shew the prisoner's guilty knowledge, but the evidence was not given, the case being strong enough without it. *R. v. Frederick Smith*, 4 *C. & P.* 411.

Forma Pauperis.

In the court of King's Bench a defendant is allowed to plead in *forma pauperis* to an indictment for a misdemeanor on his making an affidavit that he is not worth 5*l.* *R. v. Page*, 1 *Dow, P. C.* 507.

Franchise.

See Corporation and County.

Friendly Societies.

Page 506.

The 10 *G. 4. c. 56.* has been amended by 4 & 5 *W. 4. c. 40.*

Indictment for disobeying an order of justices.

An indictment lies against the president and members of a friendly society for disobeying an order of justices to re-admit a member, although it was sworn the power of doing so was not in them but in a committee. *R. v. Wade and another*, 1 *B. & Ad.* 861.

As to the construction of 33 *G. 3. c. 54. ss. 2 & 15. vide S. C.*

Justices' authority under 10 *G. 4. c. 56.*

The authority of justices under 10 *G. 4. c. 56.* to inquire whether the tables of payments and benefits in friendly societies can safely be adopted, does not extend to societies instituted before the passing of that act. *R. v. Somerset, Js.* 4 *B. & Ad.* 549. 1 *N. & M.* 252. *S. C.*

Game.

Page 507.

By 1 & 2 W. 4. c. 32. passed to amend the laws in England relating to game, the following statutes have been repealed :—13 R. 2. st. 1. c. 13. (except as to deer)—22 Ed. 4. c. 6.—11 H. 7. c. 17.—19 H. 7. c. 11.—14 & 15 H. 8. c. 10.—25 H. 8. c. 11.—33 H. 8. c. 6.—23 Eliz. c. 10.—2 Jac. 1. c. 27.—7 Jac. 1. c. 11.—22 & 23 Car. 2. c. 25.—4 W. & M. c. 23.—5 Ann. c. 14.—9 Ann. c. 25.—8 G. 1. c. 19.—10 G. 2. c. 32.—26 G. 2. c. 2.—28 G. 2. c. 12.—2 G. 3. c. 19.—13 G. 3. c. 55.—13 G. 3. c. 80.—39 G. 3. c. 34.—43 G. 3. c. 112.—48 G. 3. c. 93.—50 G. 3. c. 67.—58 G. 3. c. 75.—and 59 G. 3. c. 102.

By 1 & 2 W. 4. c. 32. s. 2. Game shall include hares, pheasants, partridges, grouse, heath, or moor game, black game, and bustards.

By sect. 3. If any person shall take game on a Sunday or Christmas day, or use any dog, gun, net, or engine, or instrument, for that purpose, he shall forfeit, not exceeding 5*l.* and costs; and if any person shall kill any partridge between the 1st of February and the 1st of September, or any pheasant between the 1st of February and the 1st of October, or any black game (except in *Somerset, Devon, or the New Forest*), between the 10th December and 20th August, or in *Somerset, Devon, or the New Forest*, between the 10th December and the 1st September, or any grouse “commonly called red game,” between 10th December and 12th August, or any bustard between the 1st of March and 1st September, he shall forfeit for every head of game not exceeding 1*l.* and costs; and every person placing poison for game to forfeit not exceeding 10*l.* and costs.

s. 4. Dealers buying or selling game more than ten days after the season has expired, and other persons having the possession of game more than forty days after the season has expired, shall forfeit not exceeding 1*l.* and costs.

s. 6. Every person obtaining an annual certificate may kill game, subject to being proceeded against for any trespass. But a certificate is not to authorize a gamekeeper to kill game, except within the limits of his appointment, unless the duty of 3*l.* 13*s.* 6*d.* be paid.

s. 7. Landlords to have the game upon lands let before the passing of the act, by lease or agreement without payment of a fine, or for not exceeding twenty-one years, unless the lease or agreement provide otherwise.

s. 10. Lords of manors are to have the game on wastes and commons, and may authorize others to take it.

s. 11. Landlords having reserved to themselves the right of killing game, may authorize others to do so.

s. 12. When the right of killing game is exclusively in the landlord, the tenant is to forfeit, not exceeding 1*l.* and costs for every head of game he shall kill, or give permission to any other person to kill.

s. 13. Lords of manors may, by writing under hand and seal, appoint game-keepers to preserve or kill game within the limits of their manors for their use. And may authorize such game-keepers within those limits to seize and take for the use of such lords all such dogs,

What is game.

Penalty for taking game on Sunday or Christmas-day, or out of season.

Penalty for poisoning game, 10*l.*

Penalty for selling, &c. after the season expired.

Certificated persons may kill game.

Landlords to have game upon lands let before the passing of the act.

Penalty upon tenant killing his landlord's game.

Lords of manors may appoint game-keepers with power to seize dogs, &c.

Lords of manors may grant deputations.

Certificated persons may sell game to licensed dealers.

Penalty for killing game without a certificate.

Penalty for destroying eggs of game, &c.

Penalty for selling game without a license.

Penalty for buying of unlicensed persons.

Penalty for dealing with uncertificated persons, &c.

Penalty on persons trespassing in the day-time in search of game, &c.

Trespassers may be arrested.

Penalty on persons found armed—using violence.

nets, engines, and instruments, for the killing or taking of game, as shall be used within the said limits by any person not authorized to kill game for want of a game certificate.

s. 14. Lords of manors may grant deputations and give to the persons deputed all the powers which may be given to a game-keeper.

s. 16. Appointments of game-keepers to be registered with the clerk of the peace.

s. 17. Certificated persons may sell game to licensed dealers; but no game-keeper shall sell game without his master's authority in writing, subject to the same penalties as if he had no certificate.

s. 18. Justices to hold a special sessions, to grant licenses to persons to deal in game. Dealers to put up a board, with the words—"licensed to deal in game."

s. 19. Dealers to pay a license duty of 2*l*.

s. 23. If any person kill or take game, or use any dog, gun, net, engine, or instrument, for the purpose of searching for, killing, or taking game, he shall forfeit not exceeding 5*l*. and costs; and the penalty to be cumulative.

s. 24. If any uncertificated person, not having the right of killing game, nor permission so to do, shall take, destroy, or knowingly have in his possession any eggs of any game-bird, or of any *swan*, *wild duck*, *teal*, or *widgeon*, he shall forfeit for each egg not exceeding 5*s*. and costs.

s. 25. If any uncertificated person shall sell, or offer game, without having a license, or if any certificated person shall sell, or offer game to an unlicensed person, he shall forfeit for every head of game not exceeding 2*l*. and costs.

s. 27. If any (unlicensed) person shall purchase game from any unlicensed person, or, *bond fide*, from a person affixing to his house a board, purporting to be the board of a licensed person, he shall forfeit for every head of game not exceeding 5*l*. and costs.

s. 28. If any licensed dealer shall buy game of an uncertificated, or unlicensed person, or sell game, without affixing a board, or affix a board to more than one house, &c., or any unlicensed person shall pretend to be licensed, he shall forfeit not exceeding 10*l*. and costs.

s. 30. Persons trespassing in the day-time, in search of game, woodcock, snipes, quails, landrails, or conies, to forfeit not exceeding 2*l*. and costs; or, if to the number of five, or more, together, not exceeding 5*l*. and costs. Persons may avail themselves of any defence which would be available in an action, except the leave of the tenant not having the right to the game, and the landlord or person, having the right to the game, may be deemed the actual occupier, whenever any such tenant shall have granted any leave, &c. And lords of manors, &c. to be deemed the actual occupiers of waste and common lands.

s. 31. Persons trespassing upon any land may be required by any person, having the right of killing the game upon such land, or any game-keeper, servant, &c., to quit the land and tell their names, and in case of refusal, may be arrested, and shall forfeit not exceeding 5*l*. and costs. Any person arrested to be brought before a justice within twelve hours.

s. 32. If any persons, to the number of five, or more, shall be on any lands, &c., in search or pursuit of any game, woodcocks, &c.,

any of such persons being armed with a gun, and such persons or any of them, shall, by violence, intimidation, or menace, prevent, or endeavour to prevent, any person authorized from approaching such persons for the purpose of requiring them to quit the land, &c.—every person so offending, and every person aiding and abetting, to forfeit not exceeding 5*l.* and costs, the penalty to be cumulative.

s. 33. Penalty for trespassing in the royal forests, &c. in the day-time, not exceeding 2*l.* and costs.

s. 34. The day-time to be from half-an-hour before sun-rise to an hour after sun-set.

s. 35. Provisions as to trespassers not to apply to persons hunting or coursing.

s. 36. Game may be taken from trespassers upon their refusal to deliver it up.

s. 38. Power, in case of non-payment of penalties, to commit for various periods, not exceeding three months, with or without hard labour.

s. 39. Gives the form of conviction.

s. 40. Gives justices power to summon witnesses, and to convict them in 5*l.* penalty, in case of disobedience.

s. 41. Limitation of proceedings, three calendar months.

s. 42. Convictions to be returned to the sessions.

s. 43. Appeal to the next sessions, not less than twelve days after conviction.

s. 44. No *certiorari* to be allowed.

I. *Going armed or otherwise in the night for the destruction of Game.*

Page 508. § 6.—The servant of a person who has merely a permission from the owner of the soil to preserve the game, has no authority under 9 *G. 4. c. 69. s. 2.* to arrest poachers. *R. v. Addis*, 6 *C. & P.* 388. *Patteson, J.*

Power to apprehend poachers.

Persons guilty of an offence under *sect. 9.* are also guilty of an offence under *sect. 1.* of the 9 *G. 4. c. 69.* and may be apprehended by a gamekeeper or servant under *sect. 2.* of that statute. And if a gamekeeper or his assistant be killed in the attempt to apprehend such persons, the offenders will be guilty of murder, though the keeper had previously knocked down some of the party, if the keeper struck not vindictively or by way of punishment or for the purpose of offence, but in self-defence only and to diminish the violence which was illegally brought into operation against him. *R. v. Wm. Ball*, *R. & M. C. C.* 330.; and *R. v. James Ball and others*, *R. & M. C. C.* 333.

Page 509. § 13.—The prisoners were indicted under 9 *G. 4. c. 69. s. 9.* for being armed upon lands by night for the purpose of taking game, and it was proved that on the occasion in question the prisoners were armed with hedge stakes. It being objected that the prisoners could not be convicted unless it appeared that the prisoners had the sticks in their hands for the purpose of using them offensively; and citing *R. v. Palmer, Mo. & Rob.* 70., *Alderson, J.*, said “that would be to repeal the act of parliament.” *R. v. Rudd, Addison and Smith*, *York Spring Assizes*, 1834, *MS.*

Persons armed upon lands by night.

But upon a similar indictment, where it appeared that the prisoner on the occasion in question had with him a thick stick, large enough

to be called a bludgeon, but also, that he was in the constant habit of using the same stick as a crutch—being lame, *Taunton, J.* held that it was a question for the jury whether the defendant had taken out the stick in question with the intention of using it as an offensive weapon, or *merely* for the purpose to which he usually applied it. And that *although the stick was a weapon within the meaning of the statute*, and might have been used as an offensive weapon, yet, unless the defendant had *taken it out with the intention of so using it*, the indictment could not be sustained. *R. v. Palmer. Mo. & Rob. 70.*

Indictment.

Page 510. § 17.—In an indictment under 9 G. 4. c. 69. s. 9. the place was stated to be “*a certain cover in the parish of A.*” *Vaughan, B.*, held the description to be too general, and directed an acquittal. *R. v. Crick, 5 C. & P. 508.*

Counts under *sect. 2.* and *sect. 9.* of this statute, and for a common assault may be joined in the same indictment. *R. v. Finacane and Williams, 5 C. & P. 551. Parke, J.*

Evidence.

Page 510. § 16.—On an indictment for entering a wood at night, and being found armed there with an intent to destroy the game; a man may be convicted, though he is not actually seen in such wood. It is sufficient, if there be evidence to shew that he had been there armed. *R. v. Worker, Ry. & M. C. C. 165.*

Upon an indictment under *sect. 9.* the prisoners must all be proved to have been in the place laid in the indictment. *R. v. Dowsell and Bridgwater, 6 C. & P. 398. Patteson, J.*

II. Unqualified Persons killing Game, &c.

By a servant
in the presence
of his master.

Page 514. s. 17.—If an unqualified person shoots at game, though by the orders, and in the presence, of his master, he is then liable to the penalty under the 5 Ann. c. 14. *Exp. Sylvester, 9 B. & C. 61.*

Gaol and Gaoler.

Page 534.

The 5 & 6 W. 4. c. 38. has been passed, according to the title of the act, “for effecting a greater uniformity of practice in the government of the several prisons in *England and Wales*, and for appointing inspectors of prisons in *Great Britain.*”

By *sect. 1.* No rules and regulations for the government of prisons made after the passing of the act, (25th August, 1835,) shall be required to be submitted for approval or approved of otherwise than is therein after mentioned.

Rules to be
submitted to
the Secretary of
State for ap-
proval.

By *sect. 2.* All rules and regulations made after the passing of that act by the court of mayor and aldermen of the city of *London*, justices of the peace, or other persons, for the government of any prison in *England and Wales*, or for the duties to be performed by the officers of such prisons, shall be submitted to one of his Majesty's principal secretaries of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such rules and regulations or to make additional rules and regulations thereto, and to subscribe a certificate or declaration that such rules and regulations as submitted to him, or altered, or added to, are proper to be enforced; and when such secretary of state shall

have subscribed such certificate or declaration, such rules and regulations, alterations, and additions, shall be binding upon the sheriff and all other persons without any other sanction or approval.—*Proviso*, that no rule or regulation save as after mentioned shall be enforced until such certificate shall have been duly subscribed by the secretary of state.

By *sect. 3.* Justices and coroners may commit for safe custody to any house of correction situate near to the place where assizes and sessions are intended to be held, persons charged before them with any offence triable at such assizes or sessions, and the keeper of any such house of correction shall deliver to the judges of assize or justices at sessions, a calendar of the prisoners in his custody for trial at such assizes or sessions, in the same way as the sheriff is required to do of prisoners in the county gaol.

Justices may commit offenders for trial to any house of correction near the place where assizes or sessions are to be held.

By *sect. 4.* Whenever any person shall be convicted at any assizes or sessions of any offence for which he shall be liable either to the punishment of death, transportation, or imprisonment, the court may commit such person to any house of correction for such county in execution of his or her judgment. And in case of the commitment of any person sentenced to death, execution of such judgment shall and may be had and done by the sheriff of the county. And in case of the commitment of any person either sentenced to transportation or pardoned for any capital offence on condition of transportation, all the powers, provisions, and authorities, for the removal of offenders sentenced to transportation, given by former acts to sheriffs and gaolers, are extended to keepers of such houses of correction.

Court may commit convicted persons to any house of correction for the county in execution of judgment.

By *sect. 5.* On or before the 1st of November in every year, clerks of the peace for counties, &c. in England and Wales, and clerks of gaol sessions and chief magistrates of cities, &c. in England and Wales having any prison, shall transmit copies of all rules and regulations in force on the 25th September preceding, for the government of every prison belonging to their respective counties, &c. to one of his Majesty's principal secretaries of state—together with copies of such new or additional rules and regulations as may be proposed for the government thereof; and the secretary of state may alter such rules or regulations, copies whereof shall be so transmitted to him, and make additional rules and regulations thereto, and subscribe a certificate that such rules and regulations as transmitted or altered are proper to be enforced, and the rules and regulations so certified shall be binding upon all persons. Clerks of the peace and clerks of gaol sessions, and chief magistrates, are to lay before the court of quarter sessions held next after the 25th September in every year, on the first day of the sessions, like copies of all rules and regulations in force on the 25th September preceding.

Prison rules to be annually transmitted to Secretary of State, who may add to or alter the same.

Copies of such rules to be annually laid before the quarter sessions.

By *sect. 6.* In case of any clerk of the peace, or clerk neglecting to transmit copies of rules and regulations for the government of any prison,—the Secretary of State, after the 1st of December, may certify what rules and regulations he deems necessary for the government of such prison, and such rules shall be binding upon all persons.

Secretary of State may certify rules in case rules not transmitted.

By *sect. 7.* The Secretary of State may appoint not exceeding five persons, to visit and inspect either singly or together, every prison or place for the confinement of prisoners in any part of *Great Britain*. And every person so appointed shall have authority to examine any person holding any office, or receiving any salary or

Power to appoint inspectors of prisons.

Inspectors to make reports, to be laid before parliament.

Penalty for obstructing inspectors.

Secretary of State or any person authorized by him may visit prisons.

His Majesty may order prisoners to be removed from one prison to another.

Expiration of imprisonment.

Persons sentenced to imprisonment for any offence within the limits of the Cent. Crim. Court may be removed to the Milbank Penitentiary.

Provisions of Penitentiary acts extended to all persons confined therein.

800 persons may be confined in Penitentiary.

Justices of boroughs not having jurisdiction at sessions to try felonies may commit persons to be tried at the county sessions.

emolument in such prison or place of confinement, and to call for and inspect all books and papers relating thereto, and to inquire into all matters concerning such prison or place of confinement. And every inspector on or before the 1st February, in every year, shall make a separate report in writing of the state of every prison or place of confinement visited by him, and transmit the same to the Secretary of State. A copy of every such report to be laid before parliament fourteen days after the 1st of February, or the meeting thereof if not assembled.

By *sect. 8.* Persons knowingly and wilfully obstructing inspectors, on conviction before a justice of the peace, to forfeit for every offence not exceeding 20*l.* and in default of payment, to be committed to prison for any period not exceeding one calendar month.

By *sect. 9.* Justices may summon offenders.

By *sect. 10.* Any one of the principal secretaries of state, may visit and inspect, or authorize in writing any person or persons, to visit and inspect any prison or place of confinement in *Great Britain*, upon any occasion such secretary of state may think expedient.

By *sect. 11.* His Majesty by order notified in writing by a principal secretary of state, may direct persons in prison in *England or Wales*, under sentence, to be removed from the prison in which they are confined, to any other prison within *England and Wales*, there to be imprisoned during their respective terms of imprisonment.

By *sect. 12.* Every prisoner whose term of imprisonment would, according to his sentence, expire on a Sunday, shall be entitled to his discharge on the Saturday preceding.

By *sect. 13.* His Majesty by order to be notified in writing by a principal secretary of state, may direct that persons sentenced to hard labour and imprisonment for any offence committed within the limits of the central criminal court act,* (4 & 5 *W. 4. c. 36.*) and who upon examination by a surgeon, shall appear to be free from distemper and fit to be removed, shall be removed to the *Milbank Penitentiary*, for the respective terms of their imprisonment.

By *sect. 14.* All provisions and regulations contained in acts for the government of the *Milbank Penitentiary*, and all powers given by such acts for the confinement, employment and managements of convicts therein, shall be applicable to persons removed to and confined therein by virtue of this act, and the central criminal court act.

By *sect. 15.* The number of male convicts which may be confined in the *Milbank Penitentiary*, limited by 59 *G. 3. c. 136.* to 600, extended to 800.

See the 5 *G. 4. c. 85.* relating to the building, repairing, and enlarging gaols and houses of correction. And see also *Transportation, ante*, p. 1301.

By the 4 & 5 *W. 4. c. 27. s. 1.* Any justice of a borough or franchise not being empowered by charter or otherwise to hear and determine felonies, may commit every person charged with any such felony as the court of quarter sessions may have jurisdiction to try, to be tried at the general quarter sessions of the peace for the county, riding, or division wherein such borough or franchise shall be

* See *sect. 7.* of the 4 & 5 *W. 4. c. 36. ante*, p. 1520.

situate, or at any adjournment thereof; and the justices of the peace for such county, &c. are thereby empowered to try persons so committed at the general quarter sessions of the peace held for such county, &c. or at any adjournment thereof.

By *sect. 2.* A justice or justices of the peace acting in any borough or franchise, may commit to the gaol of the county, riding, division, or shire in which such borough or franchise may be situate, to be tried at the general quarter sessions of the peace in and for such county, &c. any person charged with a felony which the said court of quarter sessions may have jurisdiction to try, and to the trial of which the jurisdiction of the justices of such borough or franchise at the general sessions of the peace in and for such borough or franchise does not extend; and the justices of the peace acting in and for such last-mentioned county, &c. are thereby empowered to try any such person so committed as last aforesaid at the general quarter sessions of the peace held in and for such county, &c.

Justices in boroughs, &c. may commit to county gaol any person charged with a felony which can be tried at the county, but not at the borough sessions.

By *sect. 3.* In all such towns or franchises which have a recorder and a prison fit for the confinement of prisoners, the magistrates of such town or franchise, shall commit to the prison of such town, all persons charged with having committed within such town or franchise, any felony or misdemeanor which might, if the same had been committed out of such town or franchise, and within the body of any county, have been tried by the justices of quarter sessions of such county; and the court of quarter sessions of such town or franchise shall have the same authority to inquire of, hear, determine, and punish any persons charged with such felonies or misdemeanors as the courts of quarter sessions of counties have; which quarter sessions the justices for such town or franchise are thereby required to hold.

In places having a recorder and a fit prison, the magistrates shall commit to such; and the quarter sessions of such places shall have authority to try the offenders.

By *sect. 114.* of the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*) the powers contained in the 5 G. 4. c. 85. of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county wherein, or where any borough having a separate court of quarter sessions is situated, or whereto it is adjacent for the conveyance, support, and maintenance, in such last mentioned gaol or house of correction of prisoners committed thereto from such borough, shall after the 1st May, 1836, be vested in the council of such borough, and for the purpose of making such contracts as aforesaid, the council of such borough shall have power to make the orders required by the said last mentioned act.

Council of boroughs may contract for maintenance of their prisoners in county gaols.

By *sect. 115.* In every case in which it shall have been made to appear to the satisfaction of one of his Majesty's principal secretaries of state, that there is in any borough a gaol or house of correction fit for the confinement of prisoners, the council of any borough shall have the same powers of contracting, in the name of the body corporate, with any person or body corporate having the government or ordering of such last-mentioned gaol or house of correction, in like manner as is therein-before enacted concerning contracts with justices of the peace having authority or jurisdiction in and over county gaols and houses of correction; and all the provisions of the act of 5 G. 4. c. 85. shall extend, or as nearly as may be, to all such contracts for the conveyance to and support and maintenance of offenders in such borough gaol or house of correc-

Council may contract for committing prisoners to the gaol of another borough, if sufficient.

Gas Companies.

tion; and in case his Majesty shall have granted to the borough in which such gaol or house of correction shall be situated a separate court of quarter sessions of the peace, such offenders may be tried and sentenced by such court for all offences of which the court has cognizance, and punished accordingly; and all the provisions of the act 5 G. 4. c. 85. shall extend as nearly as may be to the trial and punishment of such offenders, and to all acts necessary for such trial or consequent thereon.

Council of certain boroughs to have the same powers under the Acts 4 G. 4. c. 64. and 5 G. 4. c. 85. as justices of the peace have at their sessions in counties.

By *sect. 116.* The council of every borough named in schedule (A.) of 4 G. 4. c. 64. (except the cities of *Canterbury*, *Lichfield*, and *Lincoln*) shall have within their borough all the powers (except in hearing and determining appeals against convictions) which any justices of the peace assembled at their general or quarter sessions in any county have within the limits of their commission by virtue of the 4 G. 4. c. 64. and 5 G. 4. c. 85. or either of them, or as near thereto as the nature of the case will admit; and all things in the said acts or either of them provided to be done at any general or quarter sessions of the peace shall be done at some quarterly meeting of the council of such borough.

Gaol Delivery.

See *Assizes*, *ante*, p. 1497.

Gas Companies.

Penalty for permitting gas to escape.

By 11 G. 4. & 1 W. 4. c. 27., for lighting and watching the several parishes in England and Wales, it is enacted by *section 36.*, that whenever any gas is found to escape from any of the pipes laid down or set up in pursuance of that act, the company, or other persons supplying the gas, are required at their own expense, immediately after receiving notice thereof at their office, or usual place of transacting their business, from any person whatsoever, to take the most speedy and effectual measures to prevent such gas from escaping; and in case they do not effectually do so within twenty-four hours after such notice, and wholly and satisfactorily remove the cause of complaint, they are liable to a penalty not exceeding 5*l.*, for every day after the expiration of the twenty-four hours from giving such notice, during which the gas shall be suffered to escape; which penalty is recoverable in a summary way, on the oath of one witness, before two justices of the peace, together with all reasonable charges, by distress.

Penalties for conveying the washings or refuse into any river, &c.

By *section 38.* If any gas company, or other persons supplying gas, within the limits of any parish adopting the provisions of the act, shall empty, drain, or convey, or cause or suffer to be so done, or to run or flow, any washings or other waste liquids, substances, or things whatsoever, which shall arise or be made in the process

of making or procuring the gas, into any river, brook, or running stream, reservoir, canal, aqueduct, water-way, feeder, pond, or spring head, or well, or into any drain, sewer, or ditch communicating with any of them; or shall do or cause to be done, any annoyance, act, or thing to the water contained in any of them, whereby the water, or any part thereof, shall or may be spoiled, fouled, or corrupted; the offenders incur a forfeiture of 200*l.*, recoverable with full costs in any court of law; the whole of which is to be paid to the informer, provided it be sued for within six calendar months after the annoyance shall have ceased. But besides this penalty, if notice of the nuisance shall be given by any person whatsoever to such gas company, or other persons so offending, or to their clerk, or any person in their service or employ, and they shall not, within twenty-four hours afterwards, stop and hinder, or prevent such nuisance, then they are liable to a penalty of 20*l.*, for every day the nuisance is continued; which last-mentioned penalty is recoverable as any other penalty under the act, and is payable to the informer, or to the person who, in the judgment of the convicting justices, shall have sustained any annoyance, injury, or damage by the nuisance.

By *section 39*. All the pipes used for the conveyance of gas, in any parish adopting the provisions of the act, must be laid at the greatest practical distance,—and whenever the width of the carriage way will allow, at the distance of four feet at the least,—from the nearest part of any water pipe, except in cases where it shall be unavoidably necessary to lay the gas pipes across any of the water pipes; in which case the gas pipes shall be laid above the water pipes at the greatest practical distance, and shall form therewith a right angle, and be at least nine feet in length; so that no joint of any gas pipe shall be nearer to the water pipe than four feet at least. And in laying down the gas pipes, the contractors, or other persons supplying the gas, shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and there form the jointing with the other pipes to be added thereto with proper and sufficient materials; and shall also make and keep all such pipes, and all others communicating therewith, and all the screws, joints, inlets, apertures, or openings therein air-tight, and in all and every respect prevent the gas from escaping therefrom, under the penalty of 5*l.*

Regulations for
laying down
pipes.

By *section 40*. Whenever the water of any company for supplying the inhabitants of any parish adopting the provisions of the act with water, shall be contaminated by any of the gas, the gas company shall forfeit 20*l.*, to be sued for and recovered, and to be applied to and for the use of the water company. And whenever the water shall be so contaminated, then the gas company shall within twenty-four hours after notice in writing signed by the treasurer, or other officer of the water company, or by any person making use of such water, to be left at the usual place or office of transacting the business of the gas company, cause the most proper and effectual measures to be taken to stop and prevent the gas from escaping from their mains, works, or pipes, or contaminating the water of such company. And in case the gas company shall not, within twenty-four hours after such notice, effectually stop and prevent

Penalties for
contaminating
the water-pipes.

the gas from escaping, and wholly and satisfactorily remove the cause of such complaint; they are liable, over and above the before-mentioned penalty of 20*l.*, to a forfeiture of 10*l.* for every day the water shall be affected by the gas, recoverable with costs by the treasurer or other officer of the water company, or by any one of the directors, on the oath of one witness, before two justices of the peace, to be levied by distress, and to be paid over for the use of the water company.

Penalty for obstructing the surveyor of the commissioners of sewers.

By *section 59*. Any surveyor of the commissioners of sewers may, at any time in the day-time, enter any building belonging to a gas company, or to the inspectors appointed under the act, in order to examine if there be any escape of gas, or any washings, or other waste liquids, substances, or other things whatsoever produced in the manufacture of the gas, into any public sewer or drain; and if the surveyor is refused admittance, or on being admitted shall be obstructed in making such examination, the gas company, or inspectors, so offending shall forfeit 20*l.*

Reservation as to proceedings by indictment, or action.

The 41st *section* directs the course of proceeding for ascertaining if the water be contaminated; and by *section 42.*, it is declared, that nothing contained in the act shall prevent any proceeding by indictment, or otherwise, against the gas company, as for a public and private nuisance, or any action for any injury sustained by reason of their works.

Recovery and application of penalties.

By *section 51*. All penalties (the manner of recovering which is not particularly directed) may be recovered with costs in a summary way before two justices, and may be levied by distress; and where not directed to be otherwise applied, shall be paid to the inspectors appointed under the act, or their treasurer, to be applied for such purposes of the act as they shall direct; except where the penalty is incurred by the inspectors themselves, and in that case to be paid to the informer.

Witnesses.
Appeal.

By *section 53*. Inhabitants of parishes are declared competent witnesses; and *section 54*. gives a power of appeal to the sessions, within four calendar months after the cause of complaint, or if the sessions are held before one calendar month, then the appeal to be made to the secondly succeeding sessions, provided the party appealing gives fourteen days' notice in writing of his intention to the respondent party, and within five days afterwards enters into a recognizance with sufficient sureties to try the appeal; and by *section 57.*, no proceeding shall be quashed for want of form, or be removed by *certiorari*, or any other process.

No *certiorari*.

Act not to extend to London.

By *section 58*. Nothing in the act shall interfere with the 10 G. 4. c. 44., (the metropolitan police act,) or extend to any parish within the city of London, or the bills of mortality, or to any parish wholly or in part regulated under the provisions of any act of parliament for any of the purposes provided for by that act, or shall interfere with the powers of any corporate body.

Note: There are certain restrictions imposed on the gas companies in the metropolis, by the 57 G. 3. c. xxix. s. 11. *et seq.*: but they are not so effectual as those contained in the above act.

Greenwich Hospital.

Page 541.

By 10 G. 4. c. 26., for transferring the management of Greenwich out-pensions, and certain duties in matters of prize, to the treasurer of the navy,—the 3 G. 3. c. 16., 43 G. 3. c. 119., and 54 G. 4. c. 110., are repealed. 10 G. 4. c. 26.

By *sect. 7.* If any collector of the customs or excise, or clerk of the treasurer of the navy, unnecessarily and wilfully refuses or delays the payment of any bill for an out-pension drawn on him under the provisions of the act; or if either of them, or any person in their employ, directly or indirectly takes any fee or deduction on account of the payment of such bill; in any such case, three commissioners of the customs or excise, or the treasurer of the navy, may convict and fine the offender not exceeding 50*l.* Penalty for extortion.

By *sect. 33.* Any person wilfully and corruptly swearing or affirming any thing false or untrue, before any person authorised to administer an oath or affirmation under the act, incurs the penalties of perjury. Perjury.

By 10 G. 4. c. 25. for the better management of the affairs of Greenwich Hospital, it is provided by *sect. 19.*, that in all indictments and proceedings against any person for stealing, embezzling, pawning, or not accounting for any property of the hospital, it shall be sufficient to charge the property to belong to "*the commissioners of Greenwich Hospital.*" 10 G. 4. c. 25. Laying property in indictments.

By *sect. 40.* If any pensioner or other person shall take in pawn, buy, exchange, or receive any clothes, goods, or articles marked, stamped, or branded under that act, and not previously obliterated or defaced as therein mentioned,—such mark, stamp, or brand to be sufficient evidence, without further proof, that the articles are the property of the commissioners;—or if any person shall obliterate or deface the mark or stamp; or shall sell or dispose of, or take in pawn, buy, exchange, or receive any articles belonging to the hospital, or secrete or embezzle, or not duly account for the same, whether marked or unmarked, such articles having been intrusted to him for any purpose whatsoever; the offender is liable to a penalty of 20*l.*; which by *sect. 41.* may be recovered under the provisions of the 3 G. 4. c. 23. and 5 G. 4. c. 18. For which, see *ante*, p. 304. 368. Penalty for pawning clothes, &c.

Habeas Corpus.

Page 557. § 2.

The court of king's bench refused to discharge a prisoner from custody, who was detained for want of bail on an indictment for perjury, where the application was made on the ground that she was improperly apprehended on such charge in a foreign country; for if Arrest in foreign country

Highways.

Persons exempt from serving the office of overseer, to be exempt from the office of surveyor. Persons chosen may provide a deputy to be approved of by the justices.

Penalty for refusing to serve.

By *sect. 8.* Penalty for refusing to serve as surveyor or appointing a deputy, not exceeding 20*l.* Deputy to have all the powers, &c. of surveyor.

Surveyor with salary.

By *sect. 9.* Instead of electing a surveyor, a person of skill may be appointed to act as surveyor with a salary, and to have all the same powers, &c.

By *sect. 10.* Surveyors, at the time of passing their accounts, to deliver to the justices the name, &c. of their successors.

By *sect. 11.* In case of the inhabitants of any parish neglecting to appoint a surveyor, or of any vacancy during the year, justices at the next special highway sessions shall appoint a surveyor.

Districts may be formed with one surveyor for the whole.

By *sects. 13, 14, & 15.* Several parishes may be formed into a district, and have one surveyor with a yearly salary to superintend the whole. Parishes to continue to form such district for three years and until after twelve months' notice by any one parish, after which *such parish* to cease to form a part of such district.

By *sects. 16, & 17.* A district surveyor shall have all the powers, &c. of a surveyor, except as to levying rates, &c.—and surveyors shall be appointed in each parish of the district to levy and collect the rates.

A board of directors may be formed in large parishes.

By *sect. 18.* In parishes containing 5000 inhabitants, a board of surveyors and directors may be formed for the management and superintendence of the highways, to consist of not more than twenty persons, nor less than five, and such persons, or any three of them, shall act as a board to be called “the board for repair of the highways in the parish of —.” The board to have all the powers of the vestry and surveyors, and may appoint collectors, assistant surveyors, &c. &c.

Board may hire premises, &c.

By *sect. 19.* Such board may hire or purchase ground, or premises, for keeping implements and materials; and may direct how highways are to be curbed, paved, or otherwise repaired.

By *sect. 20.* Penalty on surveyors for neglect of duty, not to exceed 5*l.*

Roads over bridges to be repaired by parishes.

By *sect. 21.* Highways “leading to, passing over, and next adjoining” any bridge hereafter to be built, and become a county bridge, shall be repaired by the parish, person, &c. “who were by law, before the erection of the said bridge, bound to repair the said highways:” but this shall not exonerate any county from repairing “the walls, banks, or fences of the raised causeways, and raised approaches to any such bridge or the land arches thereof.”

By *sect. 22.* Powers of surveyors of highways extended to surveyors of bridges. *Vide Bridge, 3, ante, p. 1508.*

When new highways are to be kept in repair by parishes, &c.

By *sect. 23.* “No road or occupation way made, or hereafter to be made, by and at the expense of any individual or private person, body politic or corporate, nor any roads already set out, or to be hereafter set out as a private driftway or horse path in any award of commissioners under an inclosure act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair, unless the person, body politic, or corporate, proposing to dedicate such highway to the use of the public shall give three calendar months' previous notice in writing to the surveyor of

the parish, of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made, or shall make, the same in a substantial manner, and of the width required by this act, and to the satisfaction of the said surveyor, and of any two justices of the peace of the division in which such highway is situate in petty sessions assembled, who are hereby required, on receiving notice from such person, or body politic or corporate, to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by this act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter sessions holden next after the granting thereof; then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate: Provided, nevertheless, that on receipt of such notice as aforesaid, the surveyor of the said parish shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices."

Proviso.

By *sect. 24.* Direction and boundary posts or stones are to be erected, and horse and foot causeways are to be secured.

By *sect. 25.* Ground adjoining a highway may be used as a highway whilst the highway is widening or repairing—making a sufficient recompense to the owner of the ground.

Temporary road.

By *sect. 26.* Surveyors are to remove impediments and obstructions in highways within twenty-four hours after notice from a justice.

Obstructions.

By *sect. 27.* A highway rate shall be made and levied by the surveyor upon all property liable to be rated and assessed to the relief of the poor. And such rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments as have heretofore been usually rated to the highways.—Rates to be signed by the surveyor and allowed by two justices, and published in the same way as poor rates are allowed and published.

How rates are to be made.

By *sect. 28.* Surveyors may inspect poor rates and obtain extracts.

By *sect. 29.* Every rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of such premises or property, and shall also specify the sum in the pound at which it is made. The amount of rate not to exceed ten pence in the pound at any one time, or two shillings and sixpence in the pound in any one year, without the consent of four-fifths of the inhabitants.

Form and amount of rate.

By *sect. 30.* Surveyors may compound rates with landlords or assess them, in parishes where overseers have a similar power.

Power to compound rates.

Errors may be rectified.

By *sect. 31.* Errors in rates may be rectified at a special sessions for the highways.

Poor persons.

By *sect. 32.* Justices may excuse persons rated on proof of inability through poverty.

Certain exemptions to continue.

By *sect. 33.* Where property has previous to the passing of the act been exempt from the performance of statute duty or payment of composition in lieu thereof, or of highway rate, the same shall be exempt from the rate thereby imposed.

By *sect. 34.* Highway rate to be recovered in the same manner as poor rates.

By *sect. 35.* Rate payers may divide among themselves the task work or carrying of material for the repair of the highways.

By *sect. 36.* The surveyor with the consent of the vestry may appoint a collector of rates.

By *sect. 37.* The collector is to give security for the due execution of his office, by bond without stamp.

By *sect. 38.* The collector is to keep an account of all monies which he shall receive, and account to the surveyor,—and two justices may compel payment, and may fine him for wilful neglect not exceeding 20*l.*

By *sects. 39, & 40.* The surveyor shall keep separate accounts of monies levied, specifying the sums, times, and persons to and by whom the same shall have been collected and paid.—And also a book containing a particular account of all his receipts and payments, which shall be open to the inspection of every rated inhabitant. Penalty for neglect or refusal not exceeding 5*l.*

Property to be in surveyor, who shall account to his successor.

By *sects. 41. & 42.* The property in all books, papers, materials, tools, &c. shall be vested in the surveyor for the time being, and he shall deliver the same to his successor, and pay over all monies due from him.—Penalty for neglect not exceeding 5*l.*—And in case of default in paying over or accounting—double the money due.

Executors to account.

By *sect. 43.* In case of any surveyor's death, his executors shall account to the succeeding surveyor.

Mode of passing surveyor's accounts.

By *sect. 44.* Within fourteen days after the election of the surveyor, the accounts of the surveyor for the year preceding shall be laid before the vestry, (who may print and publish an abstract thereof) and within one month such accounts shall also be laid before the justices at a special highway sessions, who may hear any complaint by any person chargeable to the highway rate and make order thereon.

Justices to hold special highway sessions.

By *sect. 45.* Justices within their respective divisions are to appoint and hold not less than eight, nor more than twelve special highway sessions in every year. The surveyor of every parish shall attend the first sessions after the 25th *March*, verify his accounts, and make a return of the state of highways, &c.

By *sect. 46.* The surveyor of any parish may with the consent of the vestry, contract for materials, but he shall not share in any contract, &c. under a penalty not exceeding 10*l.*

By *sect. 47.* Penalty for taking away materials belonging to the surveyor not exceeding 10*l.*

By *sect. 48.* Lands allotted to parishes for the purpose of obtaining materials for the repair of the highways, may be sold when the materials are exhausted.

By *sect. 49.* Tenants for life and others, may renounce any claim of damages for ground or materials.

By *sect. 50.* Persons infeoffed or intrusted with lands or tenements for the maintenance of highways, may let them at the most improved yearly value without fine for not exceeding ninety-nine years.

Lands may be let.

Sections 51, 52, 53, 54, & 55. Give surveyors the power of taking materials, and prescribes the mode of doing so;—a recompence to be made to the owners of land, &c.

Power to get materials.

By *sect. 56.* Any surveyor shall forfeit not exceeding 5*l.* for allowing heaps of stone, &c. to remain upon any highway at night.

By *sect. 57.* If any surveyor shall dig materials so as to damage or endanger any mill, bridge, building, &c. &c. he shall forfeit not exceeding 5*l.* besides being liable to an action.

Penalty for damaging buildings.

By *sects. 58, 59, & 60.* Where a highway lies in two parishes, justices may determine what parts shall be repaired by each.

By *sect. 62.* A highway repaired by any person *ratione tenuræ*, may be made a parish highway by order of the justices at a special highway sessions, the person bound to repair such highway paying an annual or gross sum to the parish by way of recompence.

Highway repaired *ratione tenuræ*, may be made a parish highway.

By *sect. 63.* That portion of ground shall be deemed highway which has been maintained as highway and repaired with stones, &c. for six* months immediately preceding;—and “the centre of the highway,” shall be the middle of such highway so maintained for twelve months before.

What shall be highway; and what the centre of it.

By *sect. 64.* No tree, &c. shall hereafter be planted within fifteen feet of the centre of the carriage way or cartway. Penalty for not removing trees, &c. within twenty-one days after notice, ten shillings.

Trees, &c. not to be within 15 feet of the centre.

By *sect. 65.* Hedges and trees (except ornamental trees) growing near a highway, which exclude the sun and wind from such highway or cause any obstruction therein, may be pruned and lopped or removed by order of justices at a special highway sessions.

Hedges, &c. may be pruned or removed.

By *sect. 66.* Hedges only to be pruned between the last day of *September* and the last day of *March*;—and no person to be obliged to fell timber trees except where highways are widened or enlarged;—nor then to cut oak trees except in *April, May, or June*,—or ash, elm, or other trees except in *December, January, February, or March*.

Hedges and trees only to be cut at certain times.

By *sects. 67 & 68.* Surveyors shall have power to make ditches, &c., through lands adjoining any highway, upon recompensing the owner; and any person altering or obstructing such ditches, &c., shall reinstate them and forfeit not exceeding three times the cost.

Power to make ditches.

By *sect. 69.* If any person shall make any encroachments on a carriage way, within fifteen feet from the centre thereof, he shall forfeit not exceeding forty shillings,—and the surveyor may remove such encroachments,—the expenses and penalties to be levied upon the offender's goods.

Encroachments.

By *sect. 70.* Pits, shafts, steam-engines, machines, &c., &c., are not to be placed within certain distances of highways unless within houses or behind walls, under a penalty not exceeding 5*l.* a-day. But this not to interfere with existing wind-mills, steam engines, &c.

Steam engines, &c.

* There seems to have been some mistake made in drawing this section of the act;—the former part mentions only six months, the latter part twelve months.

Railways.

By *sect. 71.* Proprietors of railways are to erect and maintain gates at crossings; penalty for neglect not exceeding 5*l.*

Nuisances.

Sect. 72. Imposes a penalty of 40*s.* on persons riding or driving upon foot-paths, injuring highways, or committing various nuisances upon highways.

By *sect. 73.* If any timber, stone, hay, straw, &c., or other thing shall be laid upon a highway, so as to be a nuisance, and shall not, after notice by the surveyor, be forthwith removed, the surveyor, by order of a justice, may remove and dispose of the same, and apply the proceeds towards the repair of the highway.

Cattle.

By *sect. 74.* The surveyor may cause cattle found on highways to be impounded, and if the penalty of 1*s.* each (not exceeding 20*s.* for any number) and costs shall not be paid, two justices may order them to be sold. But this shall not affect any right of pasturage on the sides of the highway.

Pound breach.

By *sect. 75.* Penalty for pound breach not exceeding 20*l.*, or upon non-payment of penalty not exceeding three months' imprisonment and hard labour.

Names to be painted on carts.

By *sect. 76.* Names of owners shall be painted on waggons, carts, &c.,—penalty for neglect not exceeding 40*s.* with or without costs.

Drivers.

By *sect. 77.* No person shall act as driver of more than two carts, &c.; and any person may act as the driver of two carts, provided they are drawn by only one horse each, and the horse of the hindmost be attached by a rein not exceeding four feet in length to the foremost cart. *In case the said horse shall not be so attached* the driver shall forfeit not exceeding 20*s.*

By *sect. 78.* If the driver of any waggon, cart, or other carriage, not driven and conducted by reins, shall ride upon such waggon, &c., or upon any horse drawing the same,—or shall negligently hurt or damage any person, horse, cattle, or goods conveyed in any carriage,—“*or shall quit the same and go on the other side of the hedge or fence inclosing the same,*”—or negligently be at such a distance from such carriage that he cannot have the direction of the same,—or shall leave any cart, &c., on such highway so as to obstruct the passage thereof,—or if any person shall drive any waggon, &c., not having the owner's name painted thereon, and shall refuse to tell or to discover the name of the owner,—or shall not keep his waggon, &c., on the left side of the road,—or shall prevent any person from passing,—or shall ride or drive furiously; every person so offending, in addition to any civil action, shall forfeit not exceeding 5*l.*, and in default of payment may be imprisoned and kept to hard labour not exceeding six weeks. And any driver so offending may be apprehended by any person who shall see the offence committed; and if such driver shall refuse to discover his name he may be imprisoned and kept to hard labour not exceeding three months.

Arrest of offenders.

By *sect. 79.* Surveyors and others may seize unknown persons seen committing offences against the act.

Width of roads.

By *sect. 80.* Cartways are to be twenty feet wide,—horseways eight feet wide,—and footways three feet wide at the least. But surveyors are not to make footways without the consent of the inhabitants.

Width of gates.

By *sect. 81.* Gates across cartways shall not be less than ten feet wide,—and across horseways not less than five feet wide;—penalty for

not enlarging gates within twenty-one days after notice, not exceeding 10s. a-day.

By *sect. 82.* Justices may order narrow highways to be widened. The surveyor, with the approbation of justices, may agree with owners of ground for a recompense; or if an agreement cannot be made, the recompense may be assessed by a jury at the quarter sessions. The money to be paid by surveyor, and an additional rate not exceeding one-third of the highway rate may be levied for that purpose.

Widening highways.

By *sect. 83.* If a jury give more than the surveyor offered, the surveyor to pay the costs out of the rate, but if less, the party refusing shall pay the costs.

Costs.

Sects. 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93. contain provisions for stopping up, diverting and turning highways by order of justices, and give an appeal to the sessions to be determined by a jury.

By *sects. 94, 95, 96, 97, and 98.* Upon complaint that any highway is out of repair justices may summon the surveyor, &c., and if the highway is not in thorough repair they may fine the surveyor, &c., and may compel the repair of the highway. But if the liability to repair be disputed, such justices are to direct an indictment to be preferred at the next assizes or sessions, which, if preferred at the quarter sessions, may be removed into the court of king's bench. Justices may award costs to prosecutors or defendants, and the court before whom any indictment is tried may award costs to the prosecutor to be paid by the defendant, if it appear that the defence was frivolous or vexatious.

Mode of compelling repairs to highways.

Sect. 99. abolishes the proceeding by presentment against the inhabitants of any parish or other person on account of any highway or turnpike road being out of repair.

Presentments abolished.

By *sect. 100.* "No person shall be deemed incompetent to give evidence or be disqualified from giving testimony or evidence in any action, suit, prosecution, or other legal proceedings to be brought or had in any court of law or equity, or before any justice or justices of the peace under or by virtue of this act, by reason of being an inhabitant of the parish in which any offence shall be committed, or of being a treasurer, clerk, surveyor, district surveyor, assistant surveyor, collector, or other officer appointed by virtue of this act, nor shall such testimony or evidence for any of the reasons aforesaid be rejected or be liable to be questioned or set aside."

Inhabitants and officers to be competent witnesses.

By *sect. 101.* Justices may proceed by summons and conviction for offences or penalties under the act, and informations need not be in writing.

Proceedings before justices.

By *sect. 102.* Witnesses summoned and refusing to attend or give evidence before justices, shall (after tender of expenses) forfeit not exceeding 5*l.*

Witnesses.

By *sect. 103.* Penalties, costs, and charges shall be recovered by distress and sale;—and in case penalties, &c., are not paid forthwith upon conviction, offenders may be detained until return can be made to distress warrants, unless the offenders shall give security for their appearance on the day appointed for such return.—In case offenders have no sufficient distress they may be imprisoned not exceeding three months with or without hard labour.—Penalties, &c., are to be paid, one-half to the informer, the other half to the surveyor of the

Mode of levying and application of penalties, &c.

Highways, I. (*What is*).

place where the offence was committed. If the surveyor be the informer, the whole is to be applied in repairing the highways.

By *sect. 104*. No distress shall be unlawful for want of form, but parties aggrieved may recover satisfaction by action on the case, unless sufficient amends be tendered.

Appeal.

Sect. 105. gives an appeal to the next sessions against any rate or any order, conviction, &c. by justices.

By *sect. 106*. The provisions of 41 G. 3. c. 23. with respect to appeals against poor rates, are extended to appeals against highway rates.

No *certiorari*.

By *sect. 107*. No rate or proceeding to be quashed for want of form, or to be removed by *certiorari*, "except as therein mentioned."

Case.

By *sect. 108*. If sessions grant a case, proceedings may be removed by *certiorari*.

Notice of action.

By *sect. 109*. No action shall be commenced for any thing done in pursuance of the act, until after twenty-one days' notice, nor after tender of sufficient satisfaction, nor after three months expired. Defendant may plead the general issue—and if plaintiff fail, discontinues, &c. defendant to have costs as between attorney and client.

Costs.

Fees to clerks of the peace, &c.

By *sect. 110*. Fees to clerks of the peace, clerks to justices, or others:—for information, 6*d.*;—summons, or warrant, 1*s.* and service, 6*d.*;—notice, 6*d.* and service, 6*d.*;—order, 1*s.* and service, 6*d.*;—warrant of distress, 2*s.*;—appointment, 1*s.*;—conviction, 2*s.*;—but smaller fees are to be taken, where they are less under any local act.

By *sect. 111*. Expenses of defending prosecutions, &c. shall be paid out of the highway rates.

By *sect. 112*. The act shall not affect the metropolitan paving act, 57 G. 3. c. 29.

By *sects. 113, 114, 115, 116, & 117*. The act shall not affect turnpike roads, nor roads, bridges, &c. regulated by local acts, the rights of the universities, the City of London, the 1 G. 4. c. 7., or the powers of the commissioners of sewers.

Sect. 118. prescribes the several forms to be used for proceedings under the act.

By *sect. 119*. The act to commence 20*th* March, 1836.

I. *What is a common Highway.*

Dedication.

Page 568. § 7. Whether a road has been dedicated to, and adopted by the public, is a question for the jury. *R. v. Robert Wright*, 3 B. & Ad. 681.

Where land is vested in trustees, for certain public purposes, they may dedicate the surface to the use of the public as a highway, provided such use be not inconsistent with the purposes for which the land is vested in them. *R. v. Leake*, 5 B. & Ad. 469.

And where drainage commissioners were directed by act of parliament to purchase lands, make cuts and drains, and dispose of the soil arising from the cuts and drains in forming banks, having made the drains, and formed banks forty feet wide on each side of the drains, and it not appearing that the dedication of a part of the banks, as a road, to the use of the public would be inconsistent with the purposes to which the commissioners were bound by the act to apply it. It was held that the commissioners might dedicate a

portion of it to that use. *Per Lord Denman, C. J. and Parke, J. Littledale, J. dissentiente. Id. and see R. v. Edmonton. Mo. & Rob. 24.*

If a man opens his land so that the public pass over it continually, the public after a use of a very few years, would be entitled to pass over it, and use it as a way; and if the party does not mean to dedicate it as a way, but only to give a license, he should do some act to show that he gives a license only. The common course is to shut it up one day in every year. *The Trustees of the British Museum v. Finnis and others, 5 C. & P. 460. Patteson, J.*

If there be an old way near to a person's land, and by the fences decaying the public get upon the land that is no dedication. *Id.*

Trustees under a turnpike act agreed with the proprietors of land to exchange with them a portion of old road for land required to form part of a new road, pursuant to 3 G. 4. c. 126. s. 86. The new road having been formed, an order was made for stopping up the old road, as unnecessary, and by the same order the trustees directed the old road to be given up in exchange to the proprietors of the land upon which the new road was made, in pursuance of the agreement: — held that the new road was effectually dedicated to the use of the public in place of the old, without any conveyance being executed by the owners to the trustees. *Allnutt and another v. Pott. 1 B. & Ad. 302.*

Page 569. § 13.—There cannot be such a limited dedication of land to the use of the public as a highway, as a dedication reserving a power to make cuts and drains through the land over which the highway runs. *R. v. Leake, 2 N. & M. 595. 5 B. & Ad. 469. S.C.*

Limited dedication.

Page 569. § 14.—Where there is a space of fifty or sixty feet through which a road passes between enclosures, set out under an act of parliament; unless the contrary be shown, the public are entitled to the whole of that space, although perhaps from economy the whole may not have been kept in repair. *R. v. Robert Wright, 3 B. & Ad. 681.*

Waste land by the road side.

Semble, that the presumption that the soil of roads belongs to the owners of the adjoining lands does not hold where the roads are made under an enclosure act. The presumption that roads are the property of the adjacent owners is founded on the supposition that the roads originally passed over the lands of the owners, and therefore they still belong, *ad medium filum viæ*, to the adjacent owners. *R. v. Edmonton, Mo. & Rob. 24. Lord Tenterden, C. J.*

II. How a Highway may be changed, widened, stopped, or diverted.

See the 5 & 6 W. 4. c. 50. ss. 82. to 93.

Page 571. § 8.—Under the 55 G. 3. c. 68. s. 2. Justices may make an order for stopping up a footway as unnecessary, without directing it to be sold. *R. v. Glover, 1 B. & Ad. 482.*

Stopping up a foot-way.

An order of justices for diverting a highway and stopping up a part of it described the highway by *termini*, and by reference to a plan. The part to be stopped up was described as so many yards of the said highway lying between certain letters in the plan, and coloured

Diverting a highway.

blue. Notice was published (pursuant to 55 G. 3. c. 68.) of the order having been made; but the notice had no plan annexed, and merely described the road by *termini*, and the part to be stopped up as so many yards of such road:—*Semble* (*per Lord Tenterden, C. J., Parke, J., and Patteson, J.,—Littledale, J., dubitante*) that the order explained by a plan annexed was good,—but held by the whole court that the notice was insufficient. *R. v. Horner and Roupell, 2 B. & Ad. 150.*

Order.

Page 573. § 11.—An order of justices for diverting a public highway, and substituting a new one for it, which contained also an order for stopping up the old highway, is bad; inasmuch, as they have no power to stop up the old road, until the new one has been made. *R. v. Justices of Kent, 10 B. & C. 477.*

An order, also, for diverting an old highway and substituting a new one, must shew, on the face of it, that the justices *viewed* the line of the proposed new road. *Ibid.*

Conveyance.

Page 574. § 18.—The clause in *sect. 84.* of 3 G. 4. c. 126. directing a conveyance to trustees when lands are purchased by them, does not apply when persons are *sui juris* and acting in their own right. *Allnutt and another v. Pott, 1 B. & Ad. 302.*

III. *Who are bound to repair.*

New roads.

Page 575. § 3.—By a local act, for better governing and regulating the parish of Paddington, it was enacted, that no road, which had not been repaired by the parish, should be repaired out of the parochial funds, until such road should have been surveyed by two surveyors, and certified by them to have been properly formed, constructed, made, and drained; one of the surveyors to be appointed by the vestry, and one by the freeholder, or his lessee. A road had been set out by the proprietors, for the purpose of letting the frontage of 5660 feet, as building ground. Eight houses had been built, and were inhabited, and twenty-six carcasses erected. The road had been formed, constructed, made, and drained, and used by the public for six months; and the freeholder and his lessee had appointed a surveyor, and required the vestry to appoint one, which they refused to do. Under these circumstances, the Court of King's Bench, in the exercise of its discretion, refused to grant a *mandamus* to the vestry to compel them to appoint a surveyor; inasmuch, as such appointment would have the effect of throwing on the parish the burthen of repairing a road, which would be not so much for the benefit of the public, as for the peculiar benefit of the freeholder during the time his buildings were erecting. *R. v. Paddington Vestry, 9 B. & C. 456.*

And where a public turnpike road had been made such, pursuant to the provisions of an act of parliament, which was to continue in force for a limited period only, and the inhabitants of a parish, through which it passed, were bound thereby to do statute duty; it was held, that the performance of such statute duty was not an adoption of the road by the parish. It was a public road during the time the act continued in operation; but this does not furnish any ground for presuming an adoption by the public, and at the expiration of the act the parishoners were not bound, by common law, to repair such road. *R. v. Jonathan Mellor, 1 B. & Ad. 32.*

Page 575. § 3. A parish is at common law bound to repair all public highways within it; this being by the common law the mode by which each parish contributes its share towards the public burden of repairing all highways, instead of all the public roads being repaired by one general tax. Hence, if a road *be dedicated* to the public, the parish cannot refuse to repair it.

Parish liable to repair all public highways within it.

The absence of repair by a parish is a strong circumstance, in point of evidence, to prove that a road is not a public one. The fact of repair has a contrary effect; but the conduct of a parish in acquiescing, or refusing its acquiescence, is immaterial in every other point of view.

The adoption of a road by a parish is no more than the use of it by the public, the parish are merely a part of the public.

If a road has been used by the people in a parish, that furnishes evidence, *pro tanto*, of its being a way for the rest of the public; and if the parish have repaired it, that furnishes a strong inference that it is a public highway, or else they would not have been at that expense. But such user and repair only raises a strong presumption, and there is no estoppel against a parish in such case. An adoption *by a parish* does not necessarily, as a matter of law, make a road public; *nor does their refusal to adopt it prevent its being so.* *R. v. Leake*, 5 B. & Ad. 469. *Vide R. v. St. Benedict*, 4 B. & Ad. 450. where it was held that an adoption *by the parish* was necessary. See also *R. v. Mellor*, 1 B. & Ad. 32. *R. v. Cumberworth*, 3 B. & Ad. 108. And *R. v. Edmonton*, Mo. & Rob. 24, which seem to favour the doctrine that such an adoption is necessary to make a parish liable.

Adoption by parish not necessary.

The inhabitants of a parish are not bound to repair a way used by the public and repaired by the parish more than twenty years, if there have been no owner who could dedicate the way to the public, and the repairs by the parish be shown to have been commenced and continued under a mistaken notion of the liability of the inhabitants to repair. But if the inhabitants of such parish did not act on such mistaken supposition, but on a *voluntary disposition* on their part to repair a road useful and convenient to the public, they are bound to repair. *R. v. Edmonton*, Mo. & Rob. 24. *Ld. Tenterden*, C. J.

Parish not liable where no owner to dedicate the way.

Where an act of parliament empowers trustees to make a road from one place to another, they are bound to make the whole of that road before they throw on the public the burden of repairing any part of it. And where trustees were so empowered to make a road twelve miles in length, and completed eleven miles and a half to a point where it intersected a public highway, it was held that the district in which the part completed lay, was not bound to repair it, the making of the *whole* road being a *condition precedent* to its being repairable by the public. *R. v. Cumberworth*, 3 B. & Ad. 108.

New roads must be completed to make the public liable.

Upon the trial of an indictment for the non-repair of a road or ford across the bed of a river, Mr. Justice *Patteson* directed the jury that if they thought the evidence proved that the want of repair arose from the nature of the spot over which the alleged road passed, and was occasioned by the river flowing over it, at every tide wash-

Road or ford across a river.

ing away the materials placed there to form the road, and leaving in their place a deposit of mud, it would be absurd to require the parish to do repairs which, from the nature of things, must always be ineffectual, and that in that case they should find a verdict for the defendants. *R. v. Landulph, Mo. & Rob.* 393.

Highway in two parishes separated by a river.

Page 576. § 5. Where two parishes are separated by a river, and there is no positive evidence of the boundary line between them, it is presumed to coincide with the middle line of the channel. *R. v. Landulph, Mo. & Rob.* 393. *Patteson, J.*

See 5 & 6 *W. 4. c. 50. s. 23. ante*, p. 1636.

V. *Of the Surveyors of Highways.*—Page 583.

See 5 & 6 *W. 4. c. 50. ante*, p. 1633.

For townships repairing their own roads.

Where a parish was divided into two townships, each township having immemorially repaired the roads within it, it was held that the two townships ought to have separate surveyors, notwithstanding there had for several years been appointments made of surveyors for the whole parish in order to save expense, such surveyors having always made separate rates, and kept separate accounts for the two townships. *R. v. King's Newton, 1 B. & Ad.* 826.

As to his accounts.

Page 585. § 13.—Where a surveyor of the highways has improperly allowed the time for producing and passing his accounts to elapse, the court will compel him to produce them by *mandamus*. *R. v. Lewis Lewis, 1 Dow, P. C.* 530.

Page 585. § 14.—A surveyor of highways cannot maintain an action against the late surveyor, for the balance remaining in his hands, until his accounts have been settled and allowed, or disallowed, in the manner pointed out by the 31 *G. 3. c. 78. s. 48. Heudebourck v. Langton, 10 B. & C.* 546.

VII. *Of Obstructions and Nuisances in Highways.*

Vide 5 & 6 *W. 4. c. 50. ante*, p. 1639.

Railway along a highway.

Page 588. § 2.—See *R. v. Robert Wright, 3 B. & Ad.* 681.

Whether a railway laid along one side of a turnpike road is an obstruction or not is a question of fact for a jury.

And where such a railway caused such an obstruction of the road, that two carts could not pass, such obstruction cannot be justified on grounds of common law. For although all persons may use the railway who will pay for so doing, yet no man has a right to tell the public that they shall discontinue the use of such carriages as they have been accustomed to employ, and adopt another kind in order to pass along a new description of road, paying him for the liberty of doing so.—This furnishes no excuse for the obstruction.

And where a party is authorized by statute to lay down a railway along a previously existing road, and the statute provides that he shall keep the road for twenty yards on each side of the railway in

good repair. Such party can only be allowed to make the railway along the road, if the road is of sufficient width to allow twenty yards on each side of the railway. *R. v. Sir John Morris, Bt. 1 B. & Ad. 441.*

A company was authorized by statute to make a railway along a certain line or within one hundred yards of it. By a subsequent statute, the company was authorized to use locomotive engines upon the railway. The railway was made parallel and near to an ancient highway, and the locomotive engines frightened the horses of persons using the highway. Upon an indictment against the company for a nuisance. It was held that this inconvenience to the public must have been contemplated and intended by the legislature, the words of the statute authorizing the use of the engines being unqualified. And, there being nothing unreasonable or inconsistent in supposing that the legislature intended that the part of the public which should use the highway should sustain some inconvenience, for the sake of the greater good to be obtained by other parts of the public in the more speedy travelling and conveyance of merchandize, &c. along the railroad,—no condition or qualification can be implied that the company should use means to protect the public against injury; if such a condition had been intended, it would have been particularly expressed. *R. v. Pease and others, 4 B. & Ad. 30.*

Locomotive engines upon a railway.

Page 591. § 16.—The power of the commissioners under the 57 G. 3. c. 29. s. 72. (the metropolis paving act) to remove objects affixed to houses, without making compensation, is limited to such things as project over the public way; and cannot be extended to iron rails, which stand on a line and enclose a space, over which the public never had a right of passage. *Bouverie v. Miles, 1 B. & Ad. 38.*

Projections.

VIII. Of the Indictment.—Page 591.

See the 5 & 6 W. 4. c. 50. *ante*, p. 1641. by sect. 99. of which act the proceeding by presentment against any parish, person, &c. on account of any highway or turnpike road being out of repair is abolished.

Page 592. § 7.—In an indictment for not repairing a highway, it must be stated affirmatively that the road is within that district which is bound to repair it. *R. v. Upton-on-Severn, 6 C. & P. 133. Tindal, C. J. R. v. Bishop Auckland, 1 A. & E. 744. S. P.*

Against a parish.

Page 593. § 8.—It is no objection to an indictment for not repairing a highway, that it jointly charges three several townships, each being liable to repair its own roads. *R. v. Bishop Auckland, 1 A. & E. 744.*

Against several townships.

If an indictment state a road to be a highway for horses and carriages, and it be proved to be a horse or bridle way only;—or if a road be stated to be a pack and prime way, and it be proved to be a carriage way;—in either case the misdescription is fatal, and the defendants are entitled to an acquittal. *R. v. St. Weonard's, 5 C. & P. 579. Parke, J. And R. v. St. Weonard's, 6 C. & P. 582. Alderson, B.*

Variance.

An indictment need not state the *termini* of a road, but if they are stated they must be proved. *Id. 6 C. & P. 582.*

IX. *Of the Plea, Defence, and Evidence.* Page 596.

See the 5 & 6 W. 4. c. 50. *ante*, p. 1641. by *sect.* 100. of which the inhabitants and officers of parishes are made competent witnesses in any proceedings under that act.

River boundary.

Where two parishes are separated by a river, and there is no positive evidence of the boundary line between them, it is to be presumed to coincide with the middle line of the channel. *R. v. Landulph, Mo. & Rob.* 393. *Patteson, J.*

Rated inhabitants incompetent witnesses.

The inhabitants of a district who are rated or liable to be rated for the repair of the highways, are not competent witnesses for such district upon an indictment against it, for the non-repair of any highway in it. *R. v. Bishop Auckland, Mo. & Rob.* 286. and *note (d) Id.* 287. *Bolland, B. and Alderson, J.*

Defence.

Page 597. § 5.—It is a good defence to an indictment charging a defendant with the repair of a highway, *ratione tenuræ*, in respect of a mill,—that the mill originated within time of legal memory. *R. v. Hayman, 1 M. & M.* 401. *Tindal, C. J.*

Evidence.

Page 598. § 11.—The plea of guilty to an indictment for the non-repair of a highway is conclusive evidence upon the trial of a second indictment for the non-repair of the same highway, that it is a public highway. *R. v. Inhabitants of Whitney, 7 C. & P.* *Park, J.*

XI. *Of Appeal.*

Notice.

Page 601. § 3.—In a notice of appeal against an order of justices for stopping up a footway under the 5 G. 3. c. 68. s. 3. it sufficiently appears that the appellant is the party aggrieved, if it be stated that he and his tenants, occupiers of a farm and lands near the said way, and who have heretofore used and have a right to use it, and also other persons and the public will be put to great inconvenience. *R. v. West Riding of York, 4 B. & Ad.* 685.

The 55 G. 3. c. 68. s. 3. requires “ten days’ notice” of an appeal to the sessions against an order for stopping up a footway. Held that the statute means ten days’ notice, one inclusive and the other exclusive. *Id.*

In the above case the appellant gave notice of appeal against three orders all of the same date; he attended the clerk of the peace to enter them, and the entry was in the following form:—“A. appellant against an order of B. and C. Esquires, dated, &c. for stopping up footways in,” &c. He paid the fee as upon one appeal. At the sessions, the appellant’s counsel being called upon by the other side to elect which appeal he would proceed with, proved his notices upon one, which was dismissed on a supposed defect of notice, and the order confirmed, as were the two others, nothing being said of the appeals against these, to which the same objections would have applied. On motion for a *mandamus* to enter continuances and hear the appeals, it appearing that the preliminary objection taken was unfounded, and that the appellant had in reality intended to enter

his appeal against all the orders, the court of King's Bench made the rule absolute as to all three. *Id.*

XII. Certiorari and Costs.

Vide, Certiorari, ante, p. 1525.

Page 604. § 9.—*Sect. 64 of 13 G. 3. c. 78.* which enables the court before whom any indictment or presentment shall be tried for not repairing highways, to award costs to the defendant, only applies to cases tried in the ordinary course. So where an indictment had been removed into the court of King's Bench, and after the first trial the court had granted a second, the prosecutor's costs of both trials to abide the event,—it was held that the defendant having obtained a verdict, the judge had no authority to certify in favour of the defendant for costs, and that the act was not intended to apply where a case goes down to trial by an extraordinary interposition of the court. *R. v. Salwick, 2 B. & Ad. 136.*

Costs on the trial of an indictment removed by certiorari.

XIII. Of Turnpike Roads in general.—Page 605.

By the 3 & 4 W. 4. c. 80. the clerks to the trustees of turnpike roads are to transmit annual statements of the debts, revenues, and expenditure of such turnpike roads to the secretary of state, which shall be revised and abstracted and laid before parliament.

By *sect. 6.* of that act, the secretary of state may summon any surveyors, treasurers, clerks, &c. of turnpike roads before him, and inquire into the state of the roads and the method of maintaining them, &c.

Page 608. note.—Under the general turnpike act, 3 G. 4. c. 126. s. 65. it was held, that a trustee, who accepted the office of treasurer,—though he allowed another to receive the rents of the tolls, and never made a profit of them himself,—was nevertheless liable to the penalty imposed by that section, if the office did in fact yield any profit. *Delane v. Hillcoat, 9 B. & C. 310.*

Turnpike act. Trustees.

As to costs see *R. v. Hants Js., 1 B. & Ad. 654.*

Costs.

Horses.

Vide Cattle, ante, p. 1513.

Housebreaking.

Page 630.

See 3 & 4 W. 4. c. 44. title **Capital Punishment**, *ante*, p. 1513, and **Burglary**, *ante*, p. 1510.

Hundred.

Page 632. § 3.—The 2 & 3 W. 4. c. 72. gives a remedy against the hundred for damages done to thrashing machines, and extends the provisions of 7 & 8 G. 4. c. 31. to thrashing machines.

Indictment.

I. Where an Indictment will lie.—Page 641.

Against a corporation.

Where a body corporate is bound by the acceptance of a charter from the crown to discharge an obligation for the benefit of the public; an indictment will lie against them in case of non-performance, for the injury done to the public. *Mayor and Burgesses of Lyme Regis v. Henley, Esquire*, 3 B. & Ad. 77.

Power to justices to convict, contained in one sect. of an act, does not prevent an indictment under another sect.

Page 642. § 8.—Where a statute in one section prohibited the erection of certain buildings, &c., and enacted that such erections should be deemed a common nuisance; and in a subsequent section empowered magistrates to convict for the offence;—it was held that notwithstanding the subsequent section, a person erecting a building prohibited by the act was indictable for a nuisance. *R. v. Gregory*, 5 B. & Ad. 555.

II. Form of the Indictment.

See *tit. Evidence*, IV., (*Misnomer*), *ante*, p. 1600.

Name, &c. of party injured.

Page 646. § 11.—Adding a false description to the name of a person who must be named is fatal, although it be unnecessary to give any description. So, where in an indictment for bigamy, the second wife was described as “E. C., widow,” when, in fact, she was not a widow, it was held that the mis-description was fatal, although the description was unnecessary. *R. v. William Deeley, R. & M. C. C. 303. 4 C. & P. 579. S. C.*

Laying property.

Page 646. § 12.—An indictment charged the prisoner with setting fire to a “stack of barley of R. P. W.,” and, after plea of not guilty, it was objected that as the indictment did not allege the barley to be “of the goods and chattels of,” or to be “the property of,” the prosecutor, the statement of the property was not sufficient; but the indictment was held to be good notwithstanding. *R. v. Swatkins*, 4 C. & P. 548. *Patteson, J. and Bosanquet, J.*

But where an indictment for larceny charged the prisoner with stealing a cow and a heifer “of the cattle, goods, and chattels J. S. O.,” omitting the word “of” immediately before the prosecutor’s name,—it was held that there was no allegation of property, and therefore that the indictment did not describe any offence known

to the law. *R. v. Joseph Lambert, Northumberland Spring Assizes, 1836. Alderson, B. MS.*

Page 649. § 25.—Upon an indictment charging that the prisoners “feloniously, unlawfully, and maliciously did set fire to a certain stack of barley of *R. P. W.*, then and there being,”—it was held unnecessary that the indictment should allege that the prisoners “did then and there set fire to,” &c. *R. v. Swatkins and others, 4 C. & P. 548. Patteson, J., and Bosanquet, J.*

Time and place.

Page 649. § 26.—Upon an indictment for stealing a horse the larceny was, by mistake, laid in the fifth instead of the fourth year of the King, and the horse had been sold by the prosecutor long before the day laid in the indictment. An objection was taken that although the day was immaterial as to the act of stealing, it was material as to the right of property, and that it must not appear that the right of property was not in the prosecutor on the day the larceny is alleged to have been committed. But Lord Abinger, *C. B.* held that time was quite immaterial, and that the indictment was sufficient. *R. v. Borrodale, York Summer Assizes, 1835. MS.*

Time, where immaterial.

Where a statute makes an offence committed after a certain day triable in the county where the offender is apprehended, and authorizes laying it as if committed in that county, and does not vary the nature of the offence, it is no objection to an indictment against an offender under this statute, that the day laid in the indictment is before the day the statute mentions, if the offence were, in fact, committed after that day. *R. v. Thomas Treharne the younger, R. & M. C. C. 298.*

Place or Venue.

Page 650. § 30.—It is no objection upon a plea of not guilty to an indictment for a felony which is a transitory offence, that there is no such place in the county as that in which the offence is stated to have been committed. *R. v. Joseph Woodward, R. & M. C. C. 323.*

No such place as laid in the indictment.

If a parish be situated partly in one county and partly in another it is sufficient in an indictment for larceny to allege the offence to have been committed “at the parish of ——— in the county of ———.” *R. v. Joseph Perkins, 4 C. & P. 363. Park, J., and Littledale, J.*

Parish in two counties.

Upon an indictment for setting fire to a stack of beans, a mistake as to the name of the place where the offence was committed is immaterial upon the plea of not guilty; the charge is transitory, not local. The objection can only be taken advantage of by plea in abatement. *R. v. Woodward, R. & M. C. C. 323.*

Burning stacks a transitory offence.

Page 651. § 33.—An indictment for larceny charged the offence to have been committed “in the parish of *Saint Mary-le-Bow*,” but omitted to state “in the city of *London*.” The venue in the margin was “*London* to wit,” and in the indictment the prisoner was described as “late of *London*,” and it was held that the indictment was bad for want of a perfect venue, and that the defect was not cured by 7 *G. 4. c. 64. s. 20.*, as it did not appear from the indictment that the court had jurisdiction over the offence. *R. v. J. M. Hart, 6 C. & P. 123. O. B. S. Littledale, J., and Bosanquet, J.*

Imperfect venue.

An indictment for burglary alleged the dwelling-house to be in the parish of “*St. Botolph, Aldgate*,” but it was proved that the proper

Indictment, II. (Form.)

name of the parish was "*St. Botolph-without-Aldgate*," and the variance was held to be fatal. *R. v. Bullock and another, R. & M. C. C. 324. n. (a.)* But the prisoner in that case having been convicted of *larceny* upon the same indictment, the twelve judges held the conviction to be right. *Id.*

Statutable Offences.

Maiming.

Page 653. § 41.—Where a prisoner having been convicted upon an indictment for cutting and maiming, it was objected that the indictment did not allege that the prisoner upon the prosecutor feloniously did make an assault, but it was held that as the indictment described the offence in the words or terms of the statute, it was sufficient. *R. v. Thomas Liddle, Durham Summer Assizes, 1834. Lord Lyndhurst, C. B. MS.*

Under the riot act.

And so upon an indictment under *sect. 1.* of the riot act, 1 *G. 1. st. 2. c. 5.* for remaining assembled one hour after reading the proclamation in that act, the riot was not charged to have been in *terrorem populi*, but it was held that the indictment was good notwithstanding, the charge being different from a riot, and the indictment having described the offence in the words of the act. *R. v. Warren James, 5 C. & P. 153. Patteson, J.*

Setting out the illegal act.

If a person is indicted for doing an illegal act, the act itself must be set forth in the indictment in order that the court may see that what the defendant has done is illegal. But where a party is charged with the administration of an oath not to give evidence against his associates in doing an illegal act; the offence is not the illegal act, but the administration of the oath which preceded it. And if the oath itself, which is the offence for which the defendant is indicted, be sufficiently set out in the indictment, that is all the rules of pleading require. The illegal act sworn to be kept secret is no part of what the prisoner did,—it is not the offence itself but something collateral, or, at least extrinsic. *R. v. Brodribb, 6 C. & P. 571. Holroyd, J.* And see *post, Cath, II.*

Uncertainty.

An indictment, which may apply to either of two different definite offences, and does not specify which, is bad. Thus, if clergy be taken away from two several descriptions of compound larcenies,—though the charge in an indictment must necessarily mean either one or the other of the two descriptions,—yet if it does not shew which, this does not exclude clergy. *R. v. Marshall, Ry. & M. C. C. 158.*

Certainty.

Page 658. § 59.—In an indictment alleging a dwelling-house to be "situate at the parish aforesaid," (two parishes having been previously named) the parish last named must be intended. *R. v. Richards and others, Mo. & Rob. 177. Park, J., and Gaselee, J.*

See *R. v. Hinckley, 1 B. & Ald. 273., and R. v. Countesthorpe, 2 B. & Ad. 487.*

Duplicity.

Page 659. § 63. An indictment for a misdemeanor, in attempting to poison horses, charged that the prisoner did administer to one stallion, one horse, four mares, and three geldings, two ounces of sulphuric acid, with intent, &c. An objection was taken to the indictment, on the ground that it charged the administering to all the

horses as one offence, whereas the giving it to each horse was a distinct offence. But the objection was over-ruled, and the indictment held good. *R. v. William Mogg*, 4 C. & P. 364.

It is no objection to an indictment under 37 G. 3. c. 123. for administering an unlawful oath, that it charges "a certain oath" to have been administered to several persons, and which it was proved was administered to them successively at one meeting. *R. v. Brodribb*, 6 C. & P. 571. *Holroyd, J.*

Page 659. § 65.—An unnecessary averment may be rejected either in an indictment at common law, or upon a statute. So in an indictment for wounding, under 9 G. 4. c. 31. s. 12. the instrument or means by which the wound was inflicted need not be stated, and if stated, such statement does not confine the prosecutor to prove a wounding by such means. *R. v. Charles Briggs and James Briggs, R. & M. C. C.* 318. So also where an indictment under 9 G. 4. c. 41. s. 30. against a surgeon, charged that the defendant "knowingly and with intention to deceive," signed a certificate respecting the sanity of a person; it was held that the allegation respecting the intention was surplusage and might be rejected, and the conviction was held good although the jury had negatived the intention as alleged. *R. v. William Jones*, 2 B. & Ald. 611.

Surplusage.

See *R. v. Murray*, 5 C. & P. 145. post, *Larceny*, VII.

Page 660. § 66.—A bad conclusion, *contra pacem*, is the same as no conclusion, *contra pacem*, and is cured by 7 G. 4. c. 64. s. 20. So where the conclusion was against the peace of the King, instead of against the peace of the late King,—after plea of not guilty, it was held that the defect was cured by that statute. *R. v. Peter Charles Chalmers, R. & M. C. C.* 352. 5 C. & P. 331. *S. C.*

Conclusion
contra pacem.

Page 660. § 67.—An indictment for robbery charged that the prisoners on, &c. with force and arms, at, &c. in and upon *W. M.*, feloniously did make an assault, and him the said *W. M.* then and there feloniously did rob of one piece of, &c. &c. concluding against the peace. The indictment was drawn under 7 & 8 G. 4. c. 29. s. 6. but did not conclude against the form of the statute. After a plea of not guilty, an objection was taken to this indictment, that it did not describe any common law offence, "to rob," being only a statutable crime, and that it was not sufficient under the statute, because it did not conclude, *contra formam statuti*. Lord *Lyndhurst, C. B.* reserved the point for the consideration of the judges, and it was afterwards determined that the objection could only be taken advantage of by demurrer. *R. v. John Pybus and Martin Lennox, Durham Summer Assizes*, 1834. *MS.*

Conclusion
*contra formam
statuti*.

But in a previous case where an indictment for stealing a bank note did not conclude *contra formam statuti*, the fifteen judges held that it was bad for that defect. *R. v. William Pearson*, 4 C. & P. 572. 5 C. & P. 121.

Where an offence created by statute is charged against a principal and accessories in the same count of an indictment, it is unnecessary to insert the *contra formam statuti* both immediately after the charge against the principal and after the charge against the accessories, it is sufficient if the court conclude *contra formam statuti*. *R. v. Nelmes and others*, 6 C. & P. 347. *Park, J.*

A statute passed in a session of parliament, begun in the second and continued in the third year of a king's reign, must not be

Recital of sta-
tutes.

pleaded as passed in the *second and third years* of the reign; although such act be recited in a later act as “passed in the second and third years,” &c. And judgment upon an indictment was arrested for such a misrecital of the act, although the title of the act was stated correctly. *R. v. John Biers and another*, 1 A. & E. 327.

The correct mode of statement, in such a case, is to refer to the statute as “passed in the session of parliament, held in the — and — years of the reign of King —, intituled,” &c.

III. *Of the Joinder of several Defendants, or of several Offences.*—Page 661.

Same person not to be charged both as principal and as receiver.

See *R. v. Galloway*, R. & M. C. C. 234. stated *ante*, p. 1091. In *R. v. George Madden* the judges agreed that the rule laid down in *R. v. Galloway* should be adhered to, and that a prisoner ought not to be charged in the same indictment both as a principal and also as a receiver in the same case of larceny. *R. v. George Madden*, R. & M. C. C. 277.

Robbery, and assault with intent to rob.

And *semble*, that a count for robbery and another for an assault, with intent to commit a robbery, ought not to be joined in the same indictment.—But if they are so joined the prosecutor must be put to his election. *R. v. Gough and others*, Mo. & Rob. 71. *Park, J.*

Night poaching, &c.

A count under 9 G. 4. c. 69. s. 9. for being armed upon lands by night, for the purpose of taking game,—a count under *sect. 2.* of the same statute for assaulting gamekeepers authorized to apprehend,—a count for assaulting gamekeepers in the execution of their duty,—and a count for a common assault, may be joined in the same indictment. *R. v. Finacane and Williams*, 5 C. & P. 551. *Parke, J.*

Assaults.

So a count for an assault upon a constable, with a count for a common assault. *Id.*

IV. *Of the Finding by the Grand Jury.*—Page 663.

Lapsed sessions.

If a court of sessions have lapsed for want of a proper adjournment, any indictment found by the grand jury afterwards, is a *mere nullity*. *R. v. Chamberlain and several others*, 6 C. & P. 93, 94, 95. *Littledale, J., and Vaughan, B.*

Infanticide.

See *Murder*.

Inn.

1. It seems to be clear, that if one who keeps a common inn refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury in an action on the case at the suit of the party grieved, but may also be indicted and fined, at the suit of the King. Also, it is said, that he may be compelled by the constable of the town to receive and entertain such a person as his guest, and that it is no way material whether he have any sign before his door or not, if he make it his common business to entertain passengers. 1 *Hawk. c. 78. s. 2.*

2. An indictment lies against an innkeeper who refused to receive a guest if the innkeeper have room in his house at the time. And it is not necessary that a person should tender the price of his entertainment to the inn-keeper if his rejection is not on that ground. It is no defence that the person seeking admission to the inn was travelling on a Sunday, and came to the inn at an hour of the night after the inn-keeper's family had gone to bed. Nor is it any defence that the person seeking admission refuses to give his name and address, as the innkeeper has no right to insist upon knowing those particulars. But if a person come to an inn drunk, or behave in an indecent or improper manner, the inn-keeper is not bound to receive him. *R. v. Ivens, 7 C. & P.* . *Coleridge, J.*

Inquisition.

Page 678.

Where the jurors' names are set out at length in an inquisition, it is no objection that one of them did not sign his christian name at full length. *R. v. Bennett, 6 C. & P. 179. Gurney, B.*

If a coroner's inquisition states it to have been taken on affirmation by one of the jurors, it ought to appear on the face of the inquisition that the person affirming (under the 3 & 4 W. 4. c. 49. s. 1.) was either a Quaker or Moravian. *R. v. Polfeld, 2 Dow. P. C. 469.*

Insolvent Debtors.

Page 679. § 4.—An indictment for perjury will not lie against an insolvent debtor under 7 G. 4. c. 57. s. 71. for omissions of property in his schedule, such omissions being made an offence by sect. 70. of that act. The offence of swearing to a false schedule would be perjury under sect. 71. only in respect of any thing falsely stated in it. *R. v. J. D. Moody, 5 C. & P. 23. S. C. nom. R. v. Mudie, Mo. & Rob. 128. Lord Tenterden, C. J.*

Jury.

Debts due to an insolvent are "effects or property," within the meaning of the 7 G. 4. c. 57. s. 70. *Id.*

The insolvent debtors' acts are continued and amended by 11 G. 4. and 1 W. 4. c. 38. and 2 & 3 W. 4. c. 44.

Intent.

Page 680.

Necessary consequence of an act.

The intent of a person in doing an act may be inferred or presumed from the nature or tendency of the act done, upon the principle that every man must be supposed to intend the necessary consequence of his own act. A person who does an act *wilfully*, necessarily intends that which *must* be the necessary consequence of the act. *R. v. William Farrington, R. & R. C. C. 207. R. v. William Philp, R. & M. C. C. 263.*

Judgment.

Page 684.

A defendant, a justice of the peace, having been convicted of a misdemeanor, and the prosecutor having taken no proceedings to obtain judgment, the attorney-general prayed the judgment of the court upon him, and he was sentenced accordingly. *R. v. Constable, 3 B. & Ad. 659.*

And see **Trial**, *post*.

Jury.

Page 691.

Who to be jurors in boroughs.

By sect. 121 of the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*) it is enacted that every person being a burgess of any borough wherein there shall be a separate court of sessions of the peace (unless he shall be exempt or disqualified otherwise than in respect of property from serving on juries by virtue of the 6 G. 4. c. 50.) shall be qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any court of quarter sessions of the peace, triable within the borough of which such person shall be a burgess; and the clerk of the peace of every such borough shall give public notice of the time and place of holding every such quarter sessions of the peace, ten days at the least before the holding thereof, and shall, seven days at the least before the holding thereof, cause to be summoned a sufficient number of persons, being qualified and liable as aforesaid, to serve as grand jurors at such sessions; and shall also cause to be

Summoning, &c. of jurors to serve at borough sessions.

summoned not less than thirty-six nor more than sixty persons so qualified and liable as aforesaid to serve as jurors at every such sessions; and such summons shall be made by showing to the person to be summoned, or in case he shall be absent from the usual place of his abode by leaving with some person therein inhabiting, notice under the hand of such clerk of the peace containing the substance of such summons; and such clerk of the peace shall make out a list of the names of such persons so summoned as grand jurors, and also a panel of such persons so summoned other than grand jurors, and such list and panel shall respectively contain therein the christian names and surnames, places of abode, and descriptions of the several persons therein named; and if any person, having been duly summoned to attend on any jury shall not attend in pursuance of such summons, or, being thrice called, shall not answer to his name, or after his appearance wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every person so making default (unless some reasonable excuse shall be proved to the satisfaction of the court) as the court shall think meet; and if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorized by the court to receive the same, it shall be lawful for the court then or at its next sitting, by order of the court, signed by the clerk of the peace, to cause to be levied, by distress and sale of the goods of the person on whom such fine shall have been imposed, every such fine and the reasonable charges of such distress and sale; and every fine so received shall be paid to the treasurer of the borough, to be by him carried to the account of the borough fund: Provided, that no person shall be summoned to serve as a juror at such sessions oftener than once in one year.

Fine on jurors for non-attendance.

By *sect. 122.* Members of the council for the time being of every borough, and every justice assigned to keep the peace therein, and the treasurer and town clerk for the time being of every such borough, shall be exempt and disqualified from serving on any jury summoned within such borough respectively, and exempt from serving on any jury summoned to serve in the county wherein such borough is situate; and all burgesses of every borough in and for which a separate court of quarter sessions of the peace shall be holden shall be exempt from serving on any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate.

Members of the council, &c. exempt.

And by *sect. 123.* it is enacted, that after the passing of that act no person in any borough shall continue to be exempt from serving on juries in any of the King's courts of record at *Westminster*; or in the superior courts, civil or criminal, of the counties palatine of *Lancaster* and *Durham*, or in any court of assize, *nisi prius*, oyer and terminer, gaol delivery, or sessions of the peace, or in any other of the King's courts, by virtue of any writ, grant, charter, prescription, or otherwise; and so much of the 6 *G. 4. c. 50.* as provides that all persons in any borough exempt from serving upon juries in any of the courts aforesaid, by virtue of any prescription, charter, grant, or writ should continue to have and enjoy such exemption in as ample a manner as before the passing of that act, and should not be inserted in the lists thereafter-mentioned, shall be and the same is thereby repealed.

Burgesses of boroughs exempt from serving on juries at county sessions. All chartered exemptions abolished.

Justices.

See *Riots*, II., *post*.

IV. Of their Power, Duty, and Office.

Advocates before justices.

Page 718. § 28.—Justices of the peace may exercise their discretion as to whether they will allow any and what persons to act as advocates before them. *Collier v. Hicks and others*, 2 B. & Ad. 663.

Right of a party to be present.

In all proceedings of a judicial nature before a magistrate, any person has a right, *primâ facie*, to be present; for the magistrate is, in this instance, a species of court, the proceedings of which ought always to be public. Therefore, where a justice, proceeding to convict a party under the 5 Ann. c. 14. for keeping and using a gun to destroy game, without being duly qualified, caused a person (who claimed a right to be present) to be removed from the justice room, without any specific reason; it was held, that he was liable in an action of trespass. *Daubney v. Cooper*, 10 B. & C. 237.

Commitment for re-examination.

Page 719. § 30.—On a charge of felony against a party, a magistrate has only power to commit him for re-examination for a reasonable time. What is a reasonable time, will greatly depend upon the circumstances of each case. Fifteen days, however, have been held to be an unreasonable time, unless there be circumstances to account for so long a period; and those circumstances it will be incumbent on the magistrate to show. Such a commitment, also, is not justified, by showing, that a letter addressed to the prisoner,—but which was intercepted, and was never in his hands,—mentioned the prisoner as an accomplice in a particular felony, and stated that the writer would write again in a fortnight; nor is such a commitment justified, for the purpose of compelling the prisoner to tell who wrote the letter. The question of reasonable time is a mixed question of law and fact, and the judge may in an action against the magistrate give his opinion upon the facts proved, whether the time was reasonable or not, as matter of law. And wherever a magistrate commits a party till a certain day for re-examination, it is his bounden duty to be in attendance on that day to take the further examination; and to discharge the party, if there be not evidence sufficient to warrant a further commitment; *Davis v. Capper*, 4 C. & P. 134. *Vaughan, B.* Trespass is the proper remedy against a magistrate, for a commitment for an unreasonable time, such a commitment being, in law, wholly void. *Id.* 10 B. & C. 28.

Metropolitan police.

For the regulations respecting the office of justice of the peace in the metropolitan police offices, see 3 & 4 W. 4. c. 19.

Justices of the Peace for Boroughs.

Mayors to be justices of the peace.

By sect. 57. of the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*,) the mayor for the time being of every borough shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he shall cease to be mayor, unless disqualified, by bribery, &c.

By *sect. 98.* It shall be lawful for his Majesty from time to time to assign to so many persons as he shall think proper his Majesty's commission to act as justices of the peace in and for each borough, and in and for each of the counties of cities and towns respectively named in schedule (A.) and in and for such of the boroughs in the said schedule (B.) to which his Majesty may be pleased upon the petition of the council thereof to grant a commission of the peace: provided nevertheless, that every person so to be assigned shall reside within the borough for which he shall be so assigned, or within seven miles of such borough, or of some part thereof, during such time as he shall act as a justice of the peace in and for such borough.

His Majesty's commission may be issued for certain persons to act as justices of boroughs.

By *sect. 99.* If the council of any borough shall think it requisite that a salaried police magistrate or magistrates be appointed within such borough, such council is empowered to make a bye law fixing the amount of the salary which he or they are to receive in that behalf; and such bye law so made by any council as aforesaid shall be transmitted to one of his Majesty's principal secretaries of state, and it shall be lawful thereupon for his Majesty, if he shall think fit, to appoint one or more fit persons, according to the number fixed in the said bye law (being barristers at law of not less than five years' standing,) to be during his Majesty's pleasure police magistrate or magistrates and a justice or justices of the peace for such borough, and to direct that such sum shall be paid quarterly out of the borough fund of such borough as will be sufficient to pay such yearly salary to each of the justices so assigned as last aforesaid, not exceeding in the whole the salary mentioned in the prayer of such petition, clear of all fees or deductions, as to his Majesty shall seem fit; and the treasurer of such borough shall thereupon pay to each justice so assigned, the salary so directed to be paid, by quarterly payments. In case of vacancy of the office of police magistrate in any borough, no new appointment shall be made until the council shall again make application.

Councils of boroughs may make bye laws on which the crown may appoint salaried justices.

By *sect. 100.* The council of every borough to which a separate commission of the peace shall be granted under the provisions of that act shall be authorised and required to provide and furnish one or more fit and suitable office or offices, to be called "the police office" or "offices" of the borough, for the purpose of transacting the business of the justices of such borough, and to pay from time to time out of the borough fund such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expences of such police office or offices; provided that no room in any house licensed as a victualling-house or alehouse shall be used for the purposes of any such police office.

Council of boroughs to provide police offices.

By *sect. 101.* Persons assigned to keep the peace within any borough under the provisions of that act, shall, during the continuance of such assignment, execute the duties of a justice of the peace, although he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county, provided that such person be not disqualified by law to act as a justice of the peace for any other cause or upon any other account than in respect of estate, and although such person may not be a burgess of the borough in and for which he shall have been assigned to act as a justice of peace; and by the same *section* every

Justices of boroughs need not be qualified by estate.

Justices, IV. (*Jurisdiction.*)

summons for the appearance of any person, or warrant to compel such appearance, or warrant for the apprehension of any person charged with any offence, or search warrant, issued by any justice of the peace acting in and for any borough in any matter within his jurisdiction, may be respectively served and executed within any county in which the said borough shall be situated, or within any distance not exceeding seven miles from such borough, and within such limits shall have the same force and effect as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same shall be served or executed, any law, statute, charter, or usage to the contrary notwithstanding; and every such summons and warrant shall and may be lawfully served or executed within such limits as aforesaid by the constable or special constable to whom the same shall be directed: provided that no such person shall act as a justice of the peace at any court of gaol delivery or general or quarter sessions, or in making or levying any county rate, or rate in the nature of a county rate.

Such justices not to sit in courts of gaol delivery, &c.

Justices of boroughs to appoint a clerk, who shall not be clerk of the peace, or an alderman or councillor, nor be concerned in the prosecution of offenders committed by the borough justices.

By *sect. 102.* The justices of every borough to which a separate commission of the peace shall be granted, are to appoint a fit person to be the clerk to the justices of such borough, to be removable at their pleasure, and so as often as there shall be a vacancy; provided that it shall not be lawful for the said justices to appoint or continue as such clerk to the justices any alderman or councillor of such borough, or clerk of the peace of such borough, or the partner of such clerk of the peace, or any clerk or person in the employ of such clerk of the peace: and it shall not be lawful for the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery or general or quarter sessions. Any person being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk or in the employ of such clerk of the peace, who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of 100*l.*

A recorder of a borough shall be a justice for such borough.

By *sect. 103.* The recorder for the time being of any borough shall be a justice of the peace of and for such borough, although he may not have such qualification by estate as is required by law in the case of any other person being a justice of the peace for a county.

Recorder and justices to make declaration before acting.

By *sect. 104.* No recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate, and until he shall have made before the mayor or before any two or more of the aldermen or councillors of such borough (who is and are hereby authorised and required to administer the same) a declaration in the following form; (that is to say,)—

“I *A. B.* do hereby declare, that I will faithfully and impartially execute the office of recorder [or justice of the peace] for the borough of ——— according to the best of my judgment and ability.”

By sect. 111. After the 1st May, 1836, justices of the peace for the county in which any borough not having a separate court of quarter sessions is situated, shall have jurisdiction in such borough; and no part of any borough having a separate court of quarter sessions shall be within the jurisdiction of the justices of any county from which such borough before the passing of the act was exempt; any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding.

County justices only to have jurisdiction in boroughs not having separate quarter sessions.

By sect. 124. A table of the fees to be taken by a clerk to the justices of a borough, having a separate commission of the peace, shall be made and settled by the council, subject to the approbation of the secretary of state, after whose approval they may be lawfully taken. And until such table shall be made the clerk to the justices of any such borough shall take the same fees as any clerk to the justices for the county within or adjoining to which such borough is situated.

Fees payable to a clerk to borough justices.

V. Of their Liability, Indemnity, and Protection.

Page 722. § 7.—Where a magistrate committed a party to prison as a felon, against whom a charge had been made, under the 7 & 8 G. 4. c. 29. s. 38., of maliciously cutting down a tree on premises in his occupation, the property of *A. B.*; it was held, that the magistrate was not liable to an action for false imprisonment. For a magistrate is not liable to an action, for a mere mistake in a matter of law; and whether an occupier of premises can commit a felony of this description on premises in his own occupation, is clearly matter of law. *Mills v. Collett*, 6 Bing. 85.

Protection.

Page 723. § 13.—In an action against a magistrate for an act done in the execution of his office, the notice stated the nature of the writ intended to be sued out, and also the cause of action. A writ was accordingly sued out and served, but afterwards discontinued; and within the time allowed by the statute another writ *ejusdem generis* was sued out and served, in which another person was joined as defendant;—it was held, that the notice given was sufficient; for that the plaintiff was not confined by such notice to any one individual writ, but only to such writ or writs, specified in the notice, as applied to a similar cause of action. *Jones v. Simpson*, 1 Tyrw. 32.

Notice.

Page 724. § 18.—Where an action for false imprisonment was brought against a magistrate, in which it appeared that the plaintiff had been discharged from the wrongful imprisonment on the 14th of December, and that the action was commenced on the 14th of June; it was held, that the action was commenced in sufficient time, within the provisions of the 24 G. 2. c. 44. s. 8. *Hardy v. Ryle*, 9 B. & C. 603. And see *Pellew v. Hundred of Wonford*, Id. 134.

Commencement of action.

King's Bench.

Page 727.

The judges of this court (as well as the judges of the court of common pleas) are judges of assize for the county of *Middlesex*, *R. v. Middlesex Js.* 3 B. & Ad. 100.

Judges of assize.

Larceny.

Accessory after the fact.

Page 736. § 4.—In the case of *R. v. Lee and Scott*, *Lee* was indicted for stealing eleven 10l. promissary notes, and the prisoner *Scott* was charged as an accessory after the fact, it being charged that he did after the felony and knowing of it “harbour, receive, and maintain,” the prisoner *Lee*. It appeared that *Lee* having stolen the notes from his employers, went to the lodgings of *Scott*, who had relations in *America*, and on the same night they went by coach from *Reading* to *Liverpool*, intending to embark for *America*. This was held to be sufficient *prima facie* evidence to go to the jury upon which they might convict the prisoner *Scott* as an accessory after the fact. *R. v. Lee and Scott*, 6 C. & P. 536. *Williams, J.*

I. What is a sufficient taking and carrying away.

Asportation.

Page 736. § 4.—Where the prisoner took two half sovereigns from a bureau, and being disturbed threw them under the grate in the same room, this was held to be a sufficient *asportavit*. *R. v. Amier*, 6 C. & P. 344. *Park, J.*

II. What is Evidence of a felonious Intent.

Lucri causa.

Page 739. § 5.—If a poacher take a gun by force from a game-keeper, who is endeavouring to apprehend him, under the impression that it may be used against him, and without intending at the time to appropriate it to his own use, he is not guilty of larceny, and his resolving afterwards to sell it will not make him so. *R. v. Holloway*, 5 C. & P. 524. *Vaughan, B.*

Mistake.

Page 741. § 12.—If a man takes in a letter directed and delivered to him by mistake, supposing at first that it belongs to himself, but on finding that it does not, is tempted to appropriate to himself any property it contains; this appropriation, it was held, does not make him answerable for larceny, there being no *animus furandi* when he first received the letter. *R. v. Mucklow, Ry. & M. C. C.* 160.

Taking by delivery.

Page 743. § 19.—If the wife take the goods of her husband, and deliver them to B., who elopes with her and the goods as her adulterer, this will be felony in B.; for no consent of the husband, under these circumstances, can with any reason be presumed; the wife and goods being both taken away, *invito domino*. *R. v. Tol-free, Ry. & M. C. C.* 243.

Where goods obtained by fraud, under pretence of purchase.

Page 744. § 22.—Prevailing upon a tradesman to bring goods (proposed to be bought) to a given place, under pretence that the price shall then be paid, and prevailing upon him to leave them there in the care of a third person, and then getting them from that person, without paying the price,—is a felonious taking, if, *ab initio*, the intention was to get the goods from the tradesman without paying for them. *R. v. Campbell, Ry. & M. C. C.* 179.

By using the name of another person.

Page 744. § 23.—Upon the trial of an indictment for larceny it appeared that the prisoner went to the shop of the prosecutor, and said *Mrs. D.* wanted some shawls to look at, and the prosecutor gave the prisoner five, two of which she pledged, and the remainder were found at her lodgings. In consequence of illness, *Mrs. D.*

could not be called as a witness. *Patteson, J.* held that in the absence of proof to the contrary, it was to be presumed that *Mrs. D.* did send the prisoner for the shawls, that she obtained the possession of them properly, and that it afterwards entered into her mind to convert them to her own use, and therefore that she could not be convicted of larceny. *R. v. Ann Savage, 5 C. & P. 143.*

Page 745. § 27.—Taking goods, which the prisoner had bargained to buy without paying the price, is felonious, if by the usage of the trade the price ought to be paid before they are taken away, and the owner did not consent to their being so taken; that is, provided the jury are satisfied, that the prisoner, when he bargained for them, did not intend to pay for them,—but meant to get them into his possession, and dispose of them for his own benefit, without paying for them. *R. v. Gilbert, Ry. & M. C. C. 185.* So, getting goods delivered into a hired cart, on the express condition that the price shall be paid for them, before they are taken from the cart, and then taking them from the cart, without paying the price,—will be larceny, if the prisoner never meant to pay for them, but *ab initio* had the intention to defraud. *R. v. Pratt, Ry. & M. C. C. 250.*

Taking goods sold for ready money without paying the price.

Page 746. § 28.—Where a prisoner asked a boy for change of a half-crown, and having obtained it ran off without giving the boy the half-crown, this was held to be larceny of the change. *R. v. John Williams, 6 C. & P. 390. Park, J.*

Pretence of exchange.

Page 746. § 30.—Obtaining the delivery of a parcel from a carrier's servant, by falsely pretending to be the person to whom it is directed—if it be taken *animo furandi*—is a larceny; for the servant has no authority to part with it but to the right person. *R. v. Longstreeth, Ry. & M. C. C. 137.*

By false personation.

Page 746. § 31.—Where a pawnbroker's servant, who had a general authority from his master to act in his business, delivered up a pledge to a pawner, on receiving a parcel from him, which the servant supposed contained valuables he had just seen in the pawner's possession in a similar parcel; it was held, that the receipt of the pledges by the pawner, under these circumstances, did not amount to larceny; as the servant parted with the property and ownership, and not merely with the possession. *R. v. Jackson, Ry. & M. C. C. 119.*

Where the property parted with.

Page 747. § 34.—Where *A* delivered his watch to *B* to be repaired, who, instead of repairing it, sold it; and *A* being informed of this, said, that he would either have his watch back again, or the money; this also was held to be no larceny. *R. v. Levy, 4 C. & P. 241. Vaughan, B.*

Bailee.

Page 750. § 46.—Upon an indictment for larceny, it appeared that the prosecutrix requested the prisoner, who was merely an acquaintance, to put a letter into the post for her, telling her (the prisoner) that it contained two half-sovereigns. The prisoner broke the seal and abstracted the two half-sovereigns, and afterwards put the letter into the post. And it was held that she was guilty of larceny. *R. v. Mary Ann Jones, 7 C. & P. 151.*

Base charge.

III. *Of what Things Larceny may be committed.*(1.) *Stealing Records, Deeds, Wills, &c.*

Records and deeds.

Page 755. § 4. — Stealing records or deeds was larceny, of the parchment, at common law, unless they concerned the realty. *R. v. Walker, Ry. & M. C. C.* 155.

(2.) *Stealing Securities for Money.*—p. 756.

Obtaining blank acceptances under pretence of loan.

In a case where the prisoner was indicted for larceny of ten bills of exchange, ten orders for the payment of money, ten securities for the payment of money, ten pieces of paper stamped with, &c., and ten other pieces of paper, it appeared that the prosecutor, in consequence of having seen an advertisement applied to the prisoner to borrow money; the prisoner agreed to lend the prosecutor 5000*l.* at six per cent., and produced ten six-shilling bill stamps (having nothing written upon them), across which the prosecutor wrote "payable at Messrs. P. & Co. &c." The prisoner asked prosecutor what sum the bills should be for, and then said "I think we will make them 500*l.* each," and he wrote "£500." on each of the stamps; nothing further passed respecting what was to be done with the stamps, and the prisoner took them away. The prosecutor afterwards saw the prisoner again, when he told the prosecutor that he had omitted to sign his name, and again produced the ten stamps. The prosecutor wrote upon them above the other writing, "Accepted *F. Dugdale Astley,*" and returned them to the prisoner, who took them away, saying, he would send the money in a few days by the mail; but the prosecutor never received a farthing. It was held that these stamps, when they were taken from the prosecutor, were neither bills of exchange, orders, nor securities for money, and that larceny could not be maintained for the stamps, for they were the property of the prisoner. *R. v. John Minter Hart*, 6 *C. & P.* 106. *O. B. S. Littledale, J., Bolland, B., and Bosanquet, J.*

Halves of bank notes.

In an indictment for embezzling halves of country bank notes, remitted by post to the prosecutor, the halves of the bank notes were described as pieces of paper in some of the counts of the indictment, and as pieces of paper partly written and partly printed, bearing stamps in other counts, and which were laid to be the *goods and chattels* of the prosecutor. It was objected that these halves of notes were not goods and chattels, for if entire they would have been *choses in action* only, and that in their then state they were of no value. *Bosanquet, J.* over-ruled the objection, and the prisoner was convicted. *R. v. Edmund Mead*, 6 *C. & P.* 535.

(4.) *Stealing Trees and Shrubs.*

Gardens.

Page 762. § 2.—The words "*adjoining any dwelling-house,*" in the 7 & 8 *G. 4. c. 29. s. 38.*, import actual contact. Therefore, a piece of ground, which is separated from a house by a narrow walk and paling with a gate in it, is not within the meaning of that section. And if there is no count laying the ground, as "*belonging*" to the dwelling-house, the indictment cannot be supported. Whether ground be properly described as "*a garden,*" is a question for the jury. *R. v. Hodges*, 1 *M. & M.* 341. *Parke, J.*

Young pear-trees are "*trees*" within the meaning of *sect. 38.* of the statute, and the word "*plant*" (coupled with the words "*root, fruit,*" &c.) in *sect. 42.* of the act, does not include young trees. *Id.*

So it was held that young apple and pear trees, which were grown by the owner in order to produce fruit for sale, were trees within the meaning of the 9 G. 1. c. 22. s. 1. *R. v. Robert Taylor, R. & R. C. C. 373.*

(6.) *Stealing Animals in general.*

Page 763. § 1.—If pigeons are so far tame, that they come home every night to wooden boxes hung up on the outside of the house of their owner, and a party takes them from these boxes, with intent to steal them; this is a larceny. *R. v. George Brooks, 4 C. & P. 131.* And see *Id.* 132. *note (a).* Pigeons.

Page 763. § 2.—Where the prisoner was charged under one count of an indictment, with stealing three sheep; and the evidence was, that the sheep were in the field of the prosecutor over-night, and that they were killed by the prisoner, who had cut out and taken away the fat, leaving the carcasses in the gripe of the hedge, where they were found early the next morning; the judges held, that this count of the indictment was not supported; as a removal of the animal *whilst alive* was essential to constitute a larceny of it. *R. v. Williams, Ry. & M. C. C. 107.* But in a subsequent case it was decided, that if an animal has the same appellation, in common parlance, whether it be alive or dead,—and it makes no difference, as to the punishment for stealing it, whether it were stolen alive or dead; the indictment need not in that case specify, whether the animal was living or dead. Thus, an indictment for feloniously receiving a *lamb*, knowing it to have been stolen, may be supported; though it turns out, that the lamb had been killed, before it was received by the prisoner. *R. v. Puckering, Ry. & M. C. C. 242.* When stolen alive, or dead.

(7.) *Stealing Horses and Cattle.*—Page 764.

The 2 & 3 W. 4. c. 62. repeals the punishment of death for the offences of stealing horses, or cattle, and for killing cattle with intent to steal, and substitutes transportation for life, which the court has no power to mitigate. But by 3 & 4 W. 4. c. 44. s. 3. the court may add previous imprisonment, with or without hard labour, for any term not exceeding four years, nor less than one year. Punishment.

Page 765. § 7.—On an indictment under the former act of 14 G. 2. c. 6., for killing a sheep, with intent to steal the whole carcase; proof of killing, with intent to steal part, was held sufficient to support the charge; it being immaterial, whether the intent apply to the whole, or only to part. *R. v. John Williams, Ry. & M. C. C. 107.* A *quære* is made by the learned reporter of this case, whether merely removing a live sheep, for the purpose of killing it, with intent to steal part of the carcase, was a sufficient asportation of it under 14 G. 2. c. 6.? But it seems just as reasonable to doubt, when a thief removes a writing-desk containing money, or a chest containing plate, for the purpose of breaking either of them open, with intent to steal the contents,—whether this also would be an asportation of the writing-desk or chest. (*Note by Mr. Deacon.*) Killing with intent to steal.

Page 765. § 8. The word sheep in the 7 & 8 G. 4. c. 29. s. 25. Description of animals.

Larceny, V. (Clerks and Servants.)

includes both wethers and rig sheep, and either the one or the other may be described in an indictment as a sheep. *R. v. Stroud*, 6 C. & P. 535. *Alderson, B.*

Variance.

An indictment under the 7 & 8 G. 4. c. 22. s. 25. for stealing a *sheep*, was held not supported by proof of stealing an *ewe*; because the statute specifies both *ewe* and *sheep*. *R. v. Puddifoot*, Ry. & M. C. C. 247.

If a *lamb* is called a *sheep*, this has been also held a mis-description. *R. v. Loom*, 1 Ry. & M. 160. *R. v. William Birkett*, 4 C. & P. 216. *Bolland, B. S. P.*

In the marginal note of *R. v. Birkett* a rule of description is laid down, which certainly appears to be somewhat extraordinary,—namely, that “the term *sheep* is proper only, where the animal stolen is a *wether*”; a deduction, that, it must be confessed, does not seem either to be warranted by what fell from the learned baron on that occasion, or to agree exactly with the definition of the term *wether* in *Johnson's Dictionary*. Can it be contended, that the term *horse* is proper only, where the animal is a *gelding*? (Note by Mr. Deacon.)

IV. From what Place Larceny may be committed.**(2.) Stealing in a Dwelling-house.—Page 767.****Punishment.**

The 2 & 3 W. 4. c. 62. repeals the punishment of death for the offence of stealing in a dwelling-house to the value of 5*l.* and substitutes the punishment of transportation for life which the court has no power to mitigate; but by the 3 & 4 W. 4. c. 44. s. 3. the court may add previous imprisonment, with or without hard labour, for any term not exceeding four years, nor less than one year.

As to value.

Page 769. § 11.—Where a shopman feloniously takes away from his master's shop, at one time, several articles above 5*l.* in value in the whole, but no one separate article being worth that sum; this amounts to a capital felony of stealing in a dwelling-house to the value of 5*l.*; although the articles may have been previously embezzled by the prisoner, one or two at a time. *R. v. C. M. Jones*, 4 C. & P. 217. *Bolland, B.* citing a similar decision by *Garrow, B.*

Ownership and description.

Page 769. § 12.—A house, the joint property of partners in trade and in which they carry on their business, may be described as the dwelling-house of all the partners, although only one of them resides in it. *R. v. George Athea*, R. & M. C. C. 329.

Vide tit. Burglary, ante, p. 1511.

(5.) Stealing from Ships, Docks, and Wharfs.**Passengers' luggage.**

Page 771. § 4.—It has been held that a passenger's luggage is within the meaning of the words “goods or merchandize,” in 7 & 8 G. 4. c. 29. s. 17. relating to stealing from vessels, &c., in any navigable river, &c. *R. v. Wright, Field, and another*, 7 C. & P. 159. *Park, J., and Alderson, B.*

V. By what particular Persons some kinds of Larceny may be committed.**(2.) By Clerks and Servants.****Servant pro hac vice.**

Page 775. § 7. In a case where the prosecutor had employed the

prisoner to drive sheep to a market where he was to meet the prosecutor, and the prisoner, instead of doing so, sold the sheep and appropriated the produce, it was held that he was guilty of larceny, although the jury found that he did not intend to steal the sheep at the time he took them into his possession. For the prosecutor parted with the *custody* only and not with the possession of the sheep, and the prisoner's possession was the possession of the owner. *R. v. Bernard M^cNamee*, *R. & M. C. C.* 368.

Where *B.* and *G.* were both indicted for larceny, as principals, it appeared that the prisoner *B.*, being in the service of the prosecutor, was sent to deliver some fat, but he did not deliver the whole, having previously given part of it to *G.* It was held that the fat was in the master's possession until the separation, and that if *G.* were present at the separation he would be a principal,—otherwise a receiver. *R. v. Butleris and Grove*, *6 C. & P.* 147. *Gurney, B.*

Page 776. § 15.—A servant sent by his master to get change for a note, who embezzles the change, is not liable at common law for stealing it, but must be indicted now under the 7 & 8 *G. 4. c. 29. s. 47.* *R. v. Wm. Sullens, Ry. & M. C. C.* 129.

Embezzling change not larceny.

Embezzlement under 7 & 8 G. 4. c. 29. ss. 47. & 48.

Page 778. § 21.—In the case of *R. v. Bootyman, Littledale, J.* granted an order for the delivery by the prosecutor to the prisoner of a particular of the several charges of embezzlement intended to be brought against him. *R. v. Bootyman*, *5 C. & P.* 300.

Particular of charges.

Page 778. § 27. If money be paid to a servant, and he embezzles it, he will be liable to an indictment under 7 & 8 *G. 4. c. 29. s. 47.* although the payment was made by one of a class of the master's customers of whom the master did not authorize the servant to receive money. *R. v. Williams*, *6 C. & P.* 626. *O. B. S.*

Money received without authority.

If a servant receive money in the name of his employers, *but without having any authority so to do*, he is not guilty of embezzlement within the meaning of 7 & 8 *G. 4. c. 29. s. 47.* *R. v. John Thornley, R. & M. C. C.* 343.

So where the prisoner had been hired by the prosecutor to lead a stallion, and to charge 30*s.* for each mare, and *not to take less than 20s.* The prisoner made a charge of 6*s.* only for a mare, and appropriated the money to his own use. It was held that the prisoner did not receive the 6*s.* by virtue of his employment, and therefore was not guilty of embezzlement within the meaning of 7 & 8 *G. 4. c. 29. s. 47.* *R. v. Snowley*, *4 C. & P.* 390. *Parke, J. and Littledale, J.*

Page 778. § 28. Where the prosecutor having sold a cow sent the prisoner (a drover occasionally employed by him) to deliver it and bring back the money, but he was to receive no extra reward beyond his hire for driving;—the prisoner having appropriated the money to his own use; it was held that he was guilty of embezzlement within the meaning of 7 & 8 *G. 4. c. 29. s. 47.* *R. v. Henry Hughes, R. & M. C. C.* 370.

Servant *pro hac vice.*

Persons appointed by a leet jury and sworn in by the steward to the annual customary office of chamberlains of certain commonable lands belonging to the freemen of a corporation, the profits of which

Chamberlain of commonable lands.

the chamberlains were to receive and account for before two aldermen, paying over any surplus to their successors, and for which they received no salary,—are not clerks, servants, or persons employed in that capacity within the meaning of 7 & 8 G. 4. c. 29. s. 47. *Williams v. Stot*, 3 Tyr. 688.

Collector of sacrament money.

Page 779. § 34.—In an indictment for embezzlement under the 7 & 8 G. 4. c. 29. s. 47., the person employed to collect the sacrament money from the communicants, cannot be considered as the servant of the minister, the churchwardens, or the poor. *R. v. John Burton*, Ry. & M. C. C. 237.

The treasurer of a charity school (the funds, management, &c. of which were vested in a committee) sent the master of the school with written directions to receive a sum of 15*l.* being a voluntary contribution in aid of the funds of the school, which he received and embezzled. The schoolmaster's duty was to teach the charity children only, and it was no part of his duty to receive contributions.—It was held that an indictment would not lie under this section of the act, inasmuch as the prisoner did not stand in such a relation to the treasurer or the committee, as to bring him within the act. *R. v. Wm. Nettleton*, R. & M. C. C. 259.

Where the receiving amounts to larceny.

Page 779. § 36.—Where the prisoner, a clerk in the employment of the prosecutor, received money of the prosecutor's from another clerk in the same employment, a part of which he embezzled; it was held that the case was not within the meaning of 7 & 8 G. 4. c. 29. s. 47. *R. v. John Murray*, R. & M. C. C. 276. 5 C. & P. 145. S. C.

VI. *Of the Ownership of the Goods in respect of which Larceny may be committed.*

Allegation of property.

Page 781. § 1.—Where an indictment for larceny charged the prisoner with stealing a cow and a heifer, “of the cattle, goods, and chattels, *J. S. O.*” omitting the word “of” immediately before the prosecutor's name. It was held that there was no allegation of property, and therefore that the indictment did not describe any offence known to the law. *R. v. Joseph Lambert*, *Northumberland Spring Assizes*, 1835. *Alderson*, B. MS.

What a sufficient possession.

Page 781. § 2.—To support an indictment for larceny, there must be such a possession as would enable the prosecutor to maintain trespass. *Per Littledale, J.* in *R. v. J. M. Hart*, 6 C. & P. 106.

Fême covert.

Page 781. § 3.—A friendly society was held at a public house kept by the prisoner's husband, he being a member of the society, and the society's box containing money, &c. the property of the society was left at the public house. The box had four locks, the keys of which were kept by the stewards, of whom the husband was one. The prisoner having broken open the box and stolen between 30*l.* and 40*l.* out of it, it was held that she was not guilty of larceny. *R. v. Sarah Willis*, R. & M. C. C. 377.

Dead persons.

Page 785. § 18.—And where the prisoner had stolen goods belonging to a person deceased, who had died leaving a will, but the executor did not accept probate, and the goods were stolen before

the grant of administration with the will annexed, it was held that the goods ought to have been laid as the property of the ordinary and not of the administrator. *R. v. George Smith and Ann Smith*, 7 C. & P. 147. *Coleridge, J. and Bolland, B.*

Page 785. § 19. Property belonging to the trustees of a Methodist society, may be laid as the property of one of the trustees and others. *R. v. Boulton*, 5 C. & P. 537. *Parke, J.*

Trustees, &c.

In a case where the prisoner was charged with stealing the box of a friendly society, the property was laid in one of the four stewards of the society in all counts of the indictment but the last, and in that it was laid in the landlord of the public house where it was kept, it was held that the case must rest on the last count alone. *R. v. Wymer*, 4 C. & P. 391. *Parke, J.*

VII. *Of the Indictment, Trial, and Evidence.*

A prisoner was convicted upon an indictment containing two counts, the first for embezzlement, and the second for larceny. The first count could not be supported, the case not being within 7 & 8 G. 4. c. 29. s. 47. and in the second count the larceny was stated to have been committed "in manner and form aforesaid." An objection was taken to the latter count that it was not a count for larceny, but merely an imperfect count for embezzlement, and that the words "in manner and form aforesaid," being a material averment, could not be rejected as surplusage. Judgment was respited, to take the opinion of the judges, who held the objection fatal. *R. v. Murray*, 5 C. & P. 145.

Indictment.

Page 787. § 9.—In a case of larceny where the prisoner stole the property in the island of Jersey, and afterwards brought it into England, it was held that he could not be convicted of larceny, the case not being within the meaning of 7 & 8 G. 4. c. 29. s. 76. *R. v. George Proves, R. & M. C. C.* 349.

Property stolen in Jersey and brought into England.

Where an indictment for larceny of a bank note did not conclude *contra formam statuti*, the fifteen judges held that it was bad for the omission. *R. v. William Pearson*, 4 C. & P. 572., and *S. C.* 5 C. & P. 121.

Conclusion *contra formam statuti*.

Page 788. § 12.—The judges have determined that upon the trial of an indictment for larceny after a previous conviction; the previous conviction must be proved before the prisoner is called upon for his defence. *Per Park, J.* in *R. William Jones*, 6 C. & P. 391.

Proof of previous conviction.

In a case of larceny for stealing a box, the property in which was laid to be in the prosecutor, it appeared that the box belonged to a friendly society, and was deposited in the house of the prosecutor when the society met; it was held that there was sufficient evidence to go to the jury of the property being in the prosecutor alone. *R. v. Wymer*, 4 C. & P. 391. *Parke, J.*

Evidence of property.

Upon an indictment for stealing several articles, it is no ground for confining the prosecutor's proof to some of the articles, that they might have been, and probably were, stolen at different times; if they might have been also stolen all at once. *R. v. Dunn and Smith, Ry. & M. C. C.* 146.

Election of prosecutor.

And see *Election of Prosecutors*, ante, p. 1582.

Libel.

Page 791.

11 G. 4. &
1 W 4. c. 73.
Banishment
abolished.

Recognizances
as to news-
papers.

By 11 G. 4. & 1 W. 4. c. 78. s. 1. so much of the 60 G. 3. c. 8. as relates to the sentence of *banishment*, for the *second offence* of publishing a blasphemous or seditious libel, is repealed.

By *sect. 2.* The amount of the recognizances and bonds to be given by persons publishing newspapers and pamphlets is increased; namely, to 400*l.* for the principal, and the like sum for the sureties, in any new recognizance; and 300*l.* for the principal, and the like sum for the sureties in any such new bond; and the conditions of such recognizances and bonds are to extend to secure the payment of damages and costs recovered in actions for libels published in such newspapers and pamphlets, as well as to secure the fines on conviction when indicted.

And by *sect. 3.* If the plaintiff in an action for libel against any editor, conductor, or proprietor, shall make it appear by affidavit to the court of exchequer, that he is entitled to have execution upon a judgment in such action, but that he has not been able to procure satisfaction by writ of execution; the court may order such proceedings to be had upon such recognizances or bonds, as would be taken to obtain any fines due to the king; but the expense of these proceedings is to be exclusively borne by the plaintiff.

Extent against
newspaper
editor and sure-
ties.

It has been decided that a plaintiff who recovers damages in an action against the editor of a newspaper for a libel, cannot have an extent against the defendant and his sureties under *sect. 3.* of the above statute, unless the court is satisfied from the facts detailed by affidavit, that the plaintiff has used due diligence and has not been able to obtain satisfaction from the defendants' goods. Merely stating the issuing of a writ of *fi. fa.* and a return of *nulla bona* is insufficient. *Pennell v. Thompson*, 3 *Tyr.* 823.

II. Of Libels on Private Individuals.

What is.

Page 799. § 4.—It is a libel to publish of a protestant archbishop, that he attempts to convert catholic priests by offers of money and preferment; for it is an immoral action to endeavour to persuade any one thus to abandon his religious creed, not by reasoning, but by a gross bribe. *Archbishop of Tuam v. Robeson*, 5 *Bing.* 17.

III. What is a Justification.

Confidential
communication.

Page 805. § 12.—Though a letter from a merchant to his correspondent contain very strong expressions concerning third persons engaged in mercantile transactions, imputing to such persons "notoriety for every thing but fair dealing and a strict adherence to their engagements;" yet, if the letter was written *confidentially*, those expressions will not, *per se*, take away the privilege which attaches to such a communication, and make the latter a libel.

Ward v. Smith, 4 C. & P. 302. *Tindal, C. J.* But on a motion for a new trial in this case, on the ground that the defendant had himself agreed to deal with the very persons, whose character he thus reflected on, and even to take their bills,—and, therefore, that it was impossible to suppose that the letter could have been written *bonâ fide* for honest purposes;—the court thought the case proper to be submitted to another jury. 6 Bing. 749. *S. C.*

Page 806. § 13.—In an action for a libel, in the form of a hand-bill offering a reward for the recovery of certain bills of exchange, and stating that *A. B.* was suspected of having embezzled them; it was held a good defence, that the hand-bill was published solely with a view to the protection of persons liable on the bills, or to the conviction of the offender. And evidence is admissible in such case, that the party publishing the hand-bill followed it up, by preferring a charge of the same nature against *A. B.* before a magistrate. *Finden v. Westlake*, 1 M. & M. 461. *Tindal, C. J.*

Bonâ fide statement.

Page 807. § 17.—It is no justification for publishing a libel in a newspaper, containing a story of an individual calculated to render him ludicrous, that he told the same story of himself; for there is a great difference between a man's telling a ludicrous story of himself to his own acquaintance, and a publication of it to all the world through the medium of a newspaper. *Cook v. Ward*, 6 Bing. 409.

Words spoken by a person of himself.

Page 808. § 18.—Neither is it any justification for publishing a libel, that the defendant had the libellous statement from another person, and upon the publication disclosed the author's name. Nor does it make any difference, whether it was published with, or without, the authority of the writer; for it is a principle of law, that whoever wilfully assists in doing an unlawful act, becomes answerable for all the consequences of such act; and there is no reason to except the circulation of slander out of this rule. If the person receiving a libel may publish it at all, he may publish it in whatever manner he pleases; he may insert it in all the journals, and thus circulate the calumny through every region of the globe. The effect of this is very different from the mere repetition of oral slander. In the latter case, what has been said is known perhaps only to a few persons, and if the statement be untrue, the imputation may be got rid of; the report may not be heard of beyond the circle in which all the parties are known; and the veracity of the accuser, and the previous character of the accused, will be properly estimated. But if the report is to be spread over the world by means of the press, the malignant falsehoods of the vilest of mankind, which would not receive the least credit where the author was known, would make an impression which it would take much time and trouble to erase, were it even possible to remove that impression. For of what use is it to send the name of the author with a libel, that is to pass into a country where he is entirely unknown? The name of the author will not inform those who do not know his character, whether he is a person entitled to credit for veracity, or not,—nor whether it contains a charge made in earnest, or by way of joke,—nor whether it contains a charge made by a man of sound mind, or is merely the delusion of a lunatic. *De Crespigny v. Wellesley*, 5 Bing. 392. *per Best, C. J.*

Public rumour.

As to disclosing the author's name.

IV. *Of the Indictment and Information.*

Variance.

Page 812. § 8.—Where it was averred, that the plaintiff had been *appointed* agent to a certain company called “The *New England Company*,” and had been *employed* as such, and that the defendant libelled him in his said *employment*; and it appeared, that the company was a corporation, and that its legal name was, “The Society for the Propagation of the Gospel in *New England* and parts adjacent in *America*,”—though it was generally known by the description of “The *New England Company*,”—it was held, that this variance was not material; and also, that it was not necessary to prove the plaintiff’s *appointment*, but merely that he was *employed* by them; as the allegation of the *appointment*, and of the *employment*, stood distinct from each other. It was also held to be no objection, that a part only of one sentence in the letter, which contained the libel, was set out in the declaration; as it appeared, that enough of the letter was actually set out to comprise the substance of the charge of libel, and that the part omitted had no bearing upon the nature of the imputation made against the plaintiff, nor in any degree altered its quality or effect. But if the omission of any part of the letter had made a material alteration in the sense of the part set out, then the omission would have been fatal. *Rutherford v. Evans*, 6 *Bing.* 451. 4 *C. & P.* 74. *Tindal, C. J.*

So, where in an information for a libel imputing improper conduct to A., as *town clerk* of H, it was alleged, that it was his duty to issue *his precept* for summoning the grand jury; and, it appeared in evidence, that when he was elected *town clerk*, he was an alderman of the borough, and that the precept in question was signed first by the mayor, and then by the town clerk; upon which it was objected, that the prosecutor was not legally elected town clerk, the two offices of alderman and town clerk being incompatible,—and that the precept also was not the precept of the town clerk, but of the mayor, it being only signed by the town clerk *after* the mayor had signed;—both these objections were overruled by *Vaughan, B.*, and as to the latter objection, he held, that the town clerk’s name being to the precept, it might reasonably be taken to be his. *R. v. Hatfield*, 4 *C. & P.* 244.

Innuendo.

Where an *innuendo* gives a more extensive construction to the meaning of words than their natural meaning in common parlance imports, the *innuendo* is bad, unless it is duly connected with some introductory averment to explain and warrant the larger meaning thus given to the words. *Alexander v. Angle Tyrw.* 9.

VI. *Of the Evidence.*—Page 812.

Letters referred to in a libel.

If a libellous placard refer to letters which have been received by the prosecutor, and the placard be not intelligible without them, the letters may be given in evidence without proving the hand-writing. *R. v. Slaney*, 5 *C. & P.* 213. *Lord Tenterden, C. J.*

Evidence. Newspapers.

Page 815. § 11.—Proof that a defendant accounted at the stamp-office for the stamp-duties of the identical newspaper, in which the libel was contained, is, of itself, abundant evidence of the publication. *Cook v. Ward*, 6 *Bing.* 409.

Page 815. § 12.—The proprietor of a newspaper is *prima facie* answerable for what appears in it; but this presumption arising from proprietorship may possibly be rebutted by evidence, and an exemption established. *R. v. Gutch*, 1 M. & M. 433. *Lord Tenterden, C. J.* Newspapers.

Page 814. § 6.—The 38 G. 3. c. 78., has been amended by the 5 & 6 W. 4. c. 2., which see.

Page 819. § 28.—Evidence cannot be given of the truth of any of the allegations in a libel, even for the purpose of shewing that the remarks contained in the libel did not exceed the bounds of free discussion. *R. v. Brigstock*, 6 C. & P. 184. *Patteson, J.* Evidence of the truth of a libel.

Where an information for libel states that certain transactions took place, and that the libel was published of and concerning them, and then sets out the libel as referring to them, and the prosecutor at the trial gives general proof of such transactions to support the introductory part of his pleading; the defendant is not thereby authorised to give evidence of the particular history of those transactions so as to bring into issue the truth or falsehood of the libel. But if such evidence be adduced *bond fide*, to show that the transactions referred to are not the same with those which the information supposes it to have had in view, and the judge is informed that the evidence is offered for that purpose, it is admissible. *R. v. Grant and others*, 5 B. & Ad. 1081.

Where the language of a libel is ambiguous, and it is doubtful whether it imputes any injurious matter to the party complaining of it; the proper question for the jury is, not whether the intention of the publisher be to injure the party, but whether the *tendency* of the matter published be injurious to him. *Fisher v. Clement*, 10 B. & C. 472. Question for the jury.

Lighting and Watching.

By 11 G. 4. & 1 W. 4. c. 27., for lighting and watching the several parishes in England and Wales, it is enacted by section 43., that if any person shall wilfully break, throw down, spoil, or damage any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pole, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp; the person who shall see the offence committed may apprehend, and also any other persons may assist in apprehending, the offender, without any warrant, and deliver him to a constable, who is to convey him with all reasonable dispatch before a justice of the peace. The justice is empowered to examine upon oath any witness, who shall appear to give evidence of the offence, and to convict the party in a penalty not exceeding 40s. for every lamp, lamp-iron, or lamp-post so broken, thrown down, or damaged, and not exceeding 5*l.* for any other offence, besides requiring him in each case to make full satisfaction for the damage done; one moiety of the forfeiture to be paid to the person apprehending the offender, and the other to be applied for the purposes of the act; and in default of payment, the offender may be committed to the house of correction to hard labour, not exceeding three months. Breaking lamps, &c.

Lighting and Watching.

By *sect. 44.* If any person shall carelessly or accidentally break any of the lamps, or do any such damage as before mentioned, and shall not upon demand make satisfaction to the inspectors under the act; any magistrate, upon complaint made on oath before him, may summon the party complained of, and may award such sum of money by way of satisfaction to the inspectors for such damage, as he shall think reasonable; and in default of payment, the same may be levied as any penalty is directed to be recovered by the act.

Indictments,
&c.

By *sect. 48.* The property in all the lamps, and other things directed to be set up by the act, (except when the same shall be otherwise regulated by contract), is declared to be vested in the inspectors appointed for the purposes of the act: and in all actions, or indictments, it is sufficient to state generally that the article, or thing, which is the subject of the action or indictment, is the property of the inspectors, without particularly specifying their names.

Penalty on of-
ficers not ac-
counting.

By *sect. 17.* If any treasurer, officer, or other person, shall neglect to render the account to the inspectors as required by the act, or to pay the balance due from him, or neglect to deliver up to the inspectors, or such persons as they shall appoint to receive the same, within three days after notice in writing from the inspectors, all books, papers, and writings relating to the execution of the act; then, upon complaint made to any justice of the peace, the party may be summoned to appear before two justices; and if it shall appear to them, that any monies remain due from such officer, they may cause the same to be levied by distress; and in default of distress, if it shall appear that such officer had refused or wilfully neglected to render such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of that act remained in his possession, and that he refused or wilfully neglected to deliver or give satisfaction respecting the same; then the justices are required to commit the offender until he shall have given a true and perfect account, or until he shall have paid such monies, or compounded with the inspectors for such money, and shall have paid such composition in such manner as they shall appoint, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the inspectors, or such persons as aforesaid: but no such offender shall be kept in gaol, for want of sufficient distress, for any longer period than three calendar months. By *section 18.*, it is provided, that no commitment of such offender is to operate as a discharge to his sureties.

Penalty for
bribery and ex-
tortion.

By *sect. 19.* If any treasurer, or any other officer or servant employed by the inspectors, shall exact, take, or accept, any fee or reward whatsoever, other than such salaries, allowances, and rewards, as are appointed by the act, for or on account of any thing done by virtue of the act, or shall in anywise be concerned or interested in any bargain or contract made by the inspectors; the offender is declared to be incapable of ever serving or being employed under the act, and is also liable to a forfeiture of 50*l.* to any person who shall sue for the same.

And see *ante*, **Gas Companies**, as to the recovery and application of penalties—the competency of witnesses—the power of appeal—and the disallowance of the *certiorari*, &c. *ante*, p. 1630.

And see also further, **Watchmen**, *ante*, p. 1369, and *post*.

By sect. 87. of the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*,) after reciting that "parts of certain boroughs are within the provisions of one or more local act or acts for regulating the lighting thereof, and certain other parts of the same boroughs are not within the provisions of any local act for regulating the lighting thereof, and for want of such lighting the efficiency of the constables may be much diminished, and great facilities afforded for the commission of crimes and for the escape of offenders;" and it is enacted, that it shall be lawful for the council of any borough in any part of which there is a local act for the lighting thereof to make an order that any part of such borough not being within the provisions of any local act for the lighting thereof shall, from and after a certain day to be named in such order, be taken to be within the provisions of such local act or acts for lighting any part of such borough as the common council shall specify in such order; and after such day the part named in such order shall be within the provisions of the act or acts so specified, so far as relates to lighting, or to any rates authorised to be levied for the purpose of lighting, as fully as if such part had been originally named in such act or acts, any thing in such act or acts to the contrary notwithstanding: provided always, that every part named in such order shall be lighted in the like manner as those parts which before the making of such order were within the provisions of such local act, and that the rate to be raised for the purpose of defraying the expences of lighting any part so named in such order shall not exceed the average expence in the pound of the lighting of the other parts of such borough.

Power for council to order parts of a borough not within a local act as to lighting to be included in such act.

Proviso as to amount of rate for lighting.

By sect. 88. If the council of any borough shall, by public notice to be affixed on the outer door of the town hall or in some public place within the borough, declare that on a certain day, to be named in such notice, not less than twenty-one days after the day on which such public notice shall have been given, they will take upon themselves the powers given to the inspectors named in a certain act made in the 3 & 4 W. 4. c. 90., so far as the same relates to the lighting the whole or any part of any borough which is not within the provisions of any local act, or in which there is no power of levying rates for lighting the same, the council of such borough shall, after the day named in such notice, have the same powers and duties as belong to inspectors under the said last recited act in regard to lighting, and to levying rates for the purpose of lighting such part of the borough, except so far as the same are contrary to or inconsistent with the provisions of this act; and in such case the council shall have the sole power to fix and determine the amount of money which they will call for in any one year for the purpose of lighting such part of the borough, so that such sum shall not exceed the rate of sixpence in the pound on the full and fair annual value of all property rateable to the relief of the poor within such part of the borough: provided also, that it shall not be lawful in such case for the inhabitants of such part of the borough at any time to determine that the provisions of the said recited act shall cease to be acted upon.

Council may assume the powers of inspectors under 3 & 4 W. 4. c. 90. for lighting any part of the borough not within a local act for lighting the same.

Lunatics.

Drunkenness.

Page 831. § 24.—In a late case of murder, the case of *R. v. Grindley*, cor. *Holroyd, J.*, came under consideration, when *Park, J.* said, “Highly as I respect that late excellent judge, I differ from him, and my brother *Littledale* agrees with me. He once acted upon that case, but afterwards retracted his opinion; and there is no doubt that that case is not law. I think there would be no safety for human life if it were to be considered as law.” *R. v. Patrick Carroll*, 7 C. & P. 145.

Asylums.

Page 833. § 32.—By 2 & 3 W. 4. c. 107. the 9 G. 4. c. 41. and 10 G. 4. c. 18. are repealed, and the regulations respecting insane persons and houses for their reception, are now contained in the former act and 3 & 4 W. 4. c. 64., both these acts being continued by 5 & 6 W. 4. c. 22. for three years, and until the end of the then next session of parliament.

Insane persons not to be received into a licensed house without an order and a medical certificate.

By 2 & 3 W. 4. c. 107. s. 27. No person (not being a parish pauper) shall be received into any house, licensed for the reception of insane persons, without an order under the hand of the person by whose direction such insane person is sent, which order shall be according to the form annexed to the act, and in it shall be stated the christian and surname and place of abode, and the degree of relationship, or other circumstance of connection, between such person and the insane person, and the true name, age, place of residence, former occupation, and the asylum or other place (if any) in which the insane person shall have been previously confined, and whether such person shall have been found lunatic, or of unsound mind, under a commission issued for that purpose; nor shall any such person be received into any such house without a medical certificate of two physicians, surgeons, or apothecaries, in the manner directed by that act;—and if any person shall knowingly and wilfully receive any insane person, or person represented or alleged to be insane, to be taken care of, or confined in any house licensed under that act, without such order and medical certificate, and without making, within three clear days after the reception of such patient, a minute or entry in writing, in a book to be kept for that purpose, according to the form annexed to the act, of the true name of the patient, and also the christian and surname, occupation, and place of abode of the person by whom such patient shall be brought,—every person so offending shall be deemed guilty of a misdemeanor.

Receiving any insane person without such order and certificate a misdemeanor.

Misdemeanor.

Form, &c. of medical certificate.

By sect. 28. Every medical certificate, upon which any order shall be given for the confinement of any person (not a parish pauper) in a house, licensed under that act, shall be according to the form annexed to the act, and shall be signed by two medical practitioners, not being in partnership, and each of them being a physician, surgeon, or apothecary, who shall have separately visited, and personally examined the patient to whom it relates, not more than seven clear days previous to such confinement, and such certificate shall be signed and dated on the day on which he or she shall have been so examined, and shall state that such person is insane and proper to be confined; and every such certificate for the confinement of any per-

son in a licensed house shall, if the same be not signed by two medical practitioners, state the special circumstance which shall have prevented the patient being visited by two medical practitioners; and any patient may, under such special circumstance, be admitted into any such house, upon the certificate of one medical practitioner, provided such certificate shall be further signed by some other medical practitioner, within seven days next after the admission of such patient into any such house as aforesaid; and any person who shall knowingly, and with intention to deceive, sign any such medical certificate, untruly setting forth any of the particulars required by that act, shall be deemed guilty of a misdemeanor.—Provided always that no physician, surgeon, or apothecary shall sign any certificate of admission of a patient to any licensed house, who is wholly or partly the proprietor, or the regular professional attendant of such licensed house; nor shall any physician, surgeon, or apothecary sign any certificate for the reception of a patient into any such house, of which his father, son, brother, or partner is wholly, or in part proprietor, or the regular professional attendant, on pain of being deemed guilty of a misdemeanor.

Signing false certificate;

or a certificate for admission to the house of a relative, &c.

Misdemeanor.

By *sect. 29.* No parish pauper shall be received into any house licensed for the reception of insane persons, without an order under the hand and seal of a justice of the peace, or an order signed by the officiating clergyman, and one of the overseers of the poor of the parish, to which such pauper shall belong, and also a medical certificate, signed by a physician, surgeon, or apothecary, that such parish pauper is insane, and a proper person to be confined; and if any person shall knowingly and wilfully receive any parish pauper, alleged to be insane, into any licensed house, without such order and medical certificate,—every person so offending shall be deemed guilty of a misdemeanor.

Order, certificate, &c. required for the admission of pauper lunatics.

Receiving pauper lunatic without order, &c. a misdemeanor.

By *sect. 40.* If any proprietor or resident superintendent of any licensed house, shall fraudulently conceal or attempt to conceal any part of such house or premises, or any person detained therein as insane, from any commissioner or visitor, or from any medical or other person authorized under the act to visit and inspect such house and the patients confined therein, he shall be deemed guilty of a misdemeanor.

Concealing lunatics, &c. from inspectors'

misdemeanor.

By *sect. 46.* No person (except he be a guardian or relative, who does not derive any profit from the charge, or a committee appointed by the lord chancellor) shall under pain of being deemed guilty of a misdemeanor, receive to board or lodge in any house not licensed under that act, or take the care or charge of any insane person without first having the like order and medical certificate as are required on the admission of an insane person (not being a parish pauper) into a licensed house.

An unlicensed person receiving a lunatic without an order and certificate to be guilty of a misdemeanor.

By *sect. 47.* Annual returns of copies of orders, certificates, &c. respecting persons confined in unlicensed houses are to be made; *persons omitting* to transmit such copies to be deemed *guilty of a misdemeanor.*

Annual returns to be made.

And by *sect. 61.* Prosecutions are to be by indictment at the assizes for the county wherein the offence shall have been committed.

Prosecutions.

And by 3 & 4 W. 4. c. 64. s. 7. Every proprietor and resident su-

Maiming.

perintendent of a licensed house, who shall knowingly and wilfully neglect to transmit any notice, copy of order, medical certificate, or statement *by that act* required to be by him transmitted, shall be deemed guilty of a *misdemeanor*.

Maiming.

Page 834.

By 9 G. 4. c. 31. s. 11. If any person shall "unlawfully and maliciously shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person; or shall unlawfully and maliciously stab, cut, or wound any person *with intent* in any of the cases aforesaid to murder such person: every such offender, and every person counselling, aiding, or abetting such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon." For *sect. 12. see ante*, p. 835.

What is a shooting.

Page 836. § 9.—Upon an indictment for maliciously shooting, it appeared that three boys were poaching in a plantation, having a dog with them. When they saw the prisoner, who was a game-keeper, they ran away, and the prisoner fired at the dog, which was about five yards behind the boys, and some of the shot struck one of them. *Alderson, J.* told the jury that the question was whether the prisoner intentionally fired at the prosecutor; if he did so, he was guilty; but if he merely fired at the dog, although the shot might spread further than he expected or intended,—it might be a rash act,—but it would not amount to this crime. *R. v. George Taylor, York Spring Assizes, 1834. MS.*

Proof of loading.

Upon an indictment for shooting with a pistol loaded with gunpowder and a *lead* bullet, it has been held that it is necessary to show that the pistol was loaded with a leaden bullet, and therefore in a case where from the evidence it could not be decided whether the pistol had been so loaded or not, an acquittal was directed. *R. v. Hughes and Ann Worsley, 5 C. & P. 126. O. B. S. Bolland, B., Park, J. and Parke, J.*

Gun-barrel not in a stock.

If a percussion gunbarrel not in a stock be fired at a person, that will be a shooting within the meaning of the 9 G. 4. c. 31. ss. 11. & 12. *R. v. Giles Coates, 6 C. & P. 394. O. B. S. Patteson, J.*

What is an attempt.

Page 836. § 10.—If a pistol be loaded with gunpowder and ball, but have its touch-hole plugged so that it cannot possibly be fired, this is not "loaded arms," within the meaning of 9 G. 4. c. 31. ss. 11. & 12. *R. v. Harris, 5 C. & P. 159. Patteson, J.*

A prisoner was indicted for presenting a pistol loaded with powder and shot at the prosecutrix, and pulling the trigger with intent, &c. The case was clearly proved, except that there was no evidence of the prisoner's having loaded the pistol, or that he knew it to be loaded, but it was proved that it was loaded as laid in the indictment. *Alderson, J.* held that the case was too weak to go to the jury, and directed an acquittal. *R. v. John Till, York Spring Assizes, 1834. MS.*

Page 837. § 13.—The continuity of the skin must be broken to constitute a wound within the meaning of the 9 G. 4. c. 31. ss. 11. & 12. Neither a bruise, nor breaking a collar bone, is a wounding within the meaning of these sections of the act. *R. v. Wood and M^cMahon, R. & M. C. C. 278. 4 C. & P. 381. S. C.*

What is a wounding.

An injury inflicted by a hammer flung at a person whereby the skin is divided, is a wounding within the meaning of the statute. *R. v. Peter Withers, R. & M. C. C. 294. 4 C. & P. 446. S. C.*

Wound inflicted by a hammer.

A wound inflicted by a blow from a stick, or by a kick with the foot is a wounding within the meaning of the statute, and it is no objection that it is uncertain by which of the two means the wound was produced. *R. v. Charles Briggs and James Briggs, R. & M. C. C. 318.*

By a kick or blow with a stick.

If a person strike another with a bludgeon and breaks the skin and draws blood, and this occurs under such circumstances that if death had ensued, the offence would have amounted to murder, it will be a wounding within this act of parliament,—*it is not at all material what the instrument is.* *R. v. Payne and another, 4 C. & P. 558. Patteson, J.*

By a bludgeon.

If a dog bite A, and wound him, in consequence of B. urging it to do so, that is a wounding within the meaning of the statute. *R. v. William Elmsley, York Spring Assizes, 1834. Alderson, J. MS.*

Bite of a dog.

In a late case at Liverpool assizes, the prisoner was indicted for wounding with intent to maim,—to disfigure—and to do some grievous bodily harm. It appeared that the prisoner threw a quantity of sulphuric acid in the prosecutor's face, who was immediately taken into a chemist's shop, where proper remedies were applied. The chemist stated that the continuity of the skin was broken before he applied any thing to the face. A surgeon proved that the natural consequence of the application of sulphuric acid to the skin is to destroy it—that the vitality of the skin in some parts of the prosecutor's face had been destroyed by the acid,—the cuticle was blistered, and ultimately the epidermis also was destroyed in consequence of the application,—also that the sores were such as are called wounds. *Tindal, C. J.* left it to the jury to say, *first*, whether the prisoner threw the acid upon the prosecutor with the intent, &c. and *secondly*, whether there was a wounding, *which meant a destruction of some part of the human frame.* The jury found both these questions in the affirmative, and the learned judge respited the sentence to take the opinion of the judges whether this was a wounding within the meaning of the statute. *R. v. Ann Murrow, Liverpool Summer Assizes, 1835. MS.*

By sulphuric acid.

Page 838. § 15.—If A., in endeavouring to commit a robbery, wound B, the party he is endeavouring to rob, by kicking him, intending to disable him, so as to accomplish the robbery,—that is a wounding within the meaning of the statute. *R. v. Charles Shadbolt, 5 C. & P. 504. O. B. S.*

To accomplish a robbery.

Page 838. § 18.—Where a gamekeeper attempting lawfully to apprehend a poacher, is met with violence, and the gamekeeper in opposition to such violence strikes the poacher in self-defence only, and to diminish the violence illegally used against him and not vindictively to punish,—if the gamekeeper is killed by the poacher it is murder in him. *R. v. William Ball, R. & M. C. C. 330. R. v. James Ball, William Gidings, and another, R. & M. C. C. 333.*

Resistance of an arrest.

As to the authority of the officer.

Page 840. § 22.—If a night constable have a charge against a man for felony, and the man knows him to be an officer, the officer may arrest the man without any warrant, and without notifying to him that he has a charge against him. And if the man kills the constable when he is attempting to arrest him, the man will be guilty of murder, although he had not in fact committed a felony. *R. v. Woolmer and Palmer, R. & M. C. C. 334.*

Obstructing a lawful arrest.

If a constable apprehends a man, without a warrant, upon a charge which gives him no authority to do so; and the prisoner runs away, and is pursued by *J. S.*, who was with the constable all the time, and was charged by him to assist; and the man kill *J. S.*, to prevent his retaking him; this will not be murder, but only manslaughter; because the arrest was illegal in the first instance, and *J. S.* was bound to know it was illegal; and therefore his attempt to retake became illegal also. And it was held to make no difference, that the prisoner, whilst in custody of the constable, struck the man by whom the charge was given; because a blow given by him, whilst he was under the influence of provocation from the illegal arrest, would not justify the constable in detaining him,—at least, it would not warrant his detention, if the blow was not likely to be followed with dangerous consequences, nor made a new and distinct ground of detainer. An indictment, therefore, for feloniously cutting and maiming *J. S.*, under these circumstances, with intent to obstruct a lawful arrest, cannot be supported. *R. v. Thomas Curvan, Ry. & M. C. C. 132.*

Page 841. § 23.—A man may be arrested, without a warrant, under the 3 *G. 4. c. 40. s. 5.*,—as a person found in a dwelling-house, with intent to commit a felony,—if he is seen in the dwelling-house, but gets out of it, and is taken on fresh pursuit. And it makes no difference, that he was not seen actually getting out of the house, but was found concealing himself, to avoid being apprehended, upon other premises near. To make such an arrest legal, therefore, it is not necessary that the person should have, at the very time he is arrested, a continuing purpose to commit the felony; but he may be arrested, though that purpose is wholly ended. And where the circumstances are such, that a man *must know* why a person is about to apprehend him, he need not be told the cause; and the arrest will be legal, and the resistance illegal, as much as if the cause had been declared to him. Consequently, an indictment for cutting and maiming, with intent to resist a lawful arrest, may be supported under the circumstances above mentioned. *R. v. George Howarth, Ry. & M. C. C. 207.*

See *R. v. George Hood, R. & M. C. C. 281. post, Manslaughter.*

A person separating combatants.

Page 841. § 24.—A. was fighting with B., and in order to prevent them, C. laid hold of A. and held him down, when A. stabbed C. It was held that if C. did nothing more than was sufficient to prevent A. from beating B.,—and if C. had died of the stab,—A. would have been guilty of murder. *R. v. Bourne, 5 C. & P. 120. Parke, J.*

Indictment.

Page 842. § 28.—In an indictment for wounding with intent to murder, &c. the instrument or means by which the wound was inflicted need not be stated, and it is mere surplusage to state them. The statement of the means does not confine the prosecutor to proof of the means stated, and the statement may be rejected as surplus-

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age. A wound inflicted by a blow from a stick, or by a kick with the foot, is a wounding within the meaning of the statute. And it will be sufficient, although it is uncertain by which of the two means the wound was given. *R. v. Charles Briggs and James Briggs, R. & M. C. C. 318.*

Means immaterial.

In an indictment under *sect. 11. or 12.* it is not necessary to allege that the prisoner *upon the prosecutor feloniously did make an assault*; it is sufficient to describe the offence in the words or terms of the statute. *R. v. Thomas Liddle, Durham Summer Assizes, 1834. Lord Lyndhurst, C. B. MS.*

Unnecessary to allege an assault.

See *Arrest, Constable, Manslaughter, and Murder.*

Mandamus.

Page 847.

By 1 *W. 4. c. 21.*, the provisions of 9 *Anne, c. 20.* are extended to all writs of *mandamus*, and further provisions are made for improving the proceedings on this writ.

A party found guilty by a jury at a court of sessions of the peace irregularly held, is entitled to have the record of the proceedings correctly made up according to the fact, and to make any use of it that he can. And the court of King's Bench will grant a *mandamus* to the justices to make up such record, *R. v. Js. Middlesex. In re Bowman, 5 B. & Ad. 1113.*

Page 848. § 4.—Where the justices at quarter sessions, after hearing only one witness for the respondents at the trial of an appeal, wrongfully decided (on objections taken) that the appeal did not lie; it was held, that the proceedings of the sessions was, under these circumstances, no hearing of the case; and that, as they had not exercised their jurisdiction, a *mandamus* might issue calling upon them to hear the appeal. *R. v. Justices of Gloucestershire, 1 B. & Ad. 1.*

To sessions to hear an appeal.

And see *Burial of the Dead, ante, p. 1512.*

Manslaughter.

Page 850.

A person may be guilty of manslaughter either by having caused or *accelerated* the death of another. *R. v. Webb, Mo. & Rob. 405. Lord Lyndhurst, C. B. R. v. Martin, 5 C. & P. 128. Parke, J.*

Accelerating death.

For whether a man has a prospect of dying shortly of disease, or ultimately of old age, the unlawful abridgment of his existence by another, will make the offender equally guilty of felony. No man can be excused of depriving another of any period of his life, however short, merely because the person dying must shortly have died from some other cause; and, indeed, a person who merely accelerates death is as much guilty of causing it, when it happens,

Manslaughter.

as if there had been no predisposing cause. There is one case which seems in some measure at variance with this doctrine. That was a case of manslaughter, in which it appeared that the prisoner had a scuffle with the deceased (who was intoxicated,) during which he struck him a blow upon the stomach, of which he died. A surgeon proved that a blow upon the stomach, during the time the deceased was in a state of passion and intoxication, was calculated to occasion death, but not if the party had been sober. And *Hullock, B.*, directed an acquittal, and is reported to have said "that where the death was occasioned partly by a blow and partly by a predisposing circumstance, it was impossible so to apportion the operations of the several causes, as to be able to say with certainty that the death was immediately occasioned by any one of them in particular." *Johnson's case, Lewin, C. C. 164.* This decision (supposing no error to have crept into the report) appears to be overruled by the cases above cited, and if that were not so, it is submitted that it is clearly untenable, notwithstanding the great authority of the learned Baron. For if that were law, wherever a prisoner could establish a pre-existing cause having a tendency (however slight) to produce death, which contributed, together with his illegal act, in causing death, he would be entitled to his acquittal upon the ground of the uncertainty as to the cause which produced the fatal result. It is laid down in very many cases, and is undoubted law, that wherever a man intending to commit one offence, commits another, he is as much answerable for that which he commits as if he had committed it intentionally. It will be observed that in the above case there was no evidence of any pre-existing cause *likely to produce death*. It was not pretended that the prisoner acted merely in self-defence, and if so, it is impossible to contend that the *assault* on the deceased was lawful. The conclusion must therefore be that the deceased came to his death by the illegal act of the prisoner, for which he was answerable.

We can only deal with a case as it is reported, but it is difficult to avoid thinking that in the present instance there must be some mistake.

And in a case of manslaughter to be found in the same reports, *Tindal, C. J.*, says,—“if death ensues as the consequence of a wrongful act,—an act which the party who commits it can neither justify nor excuse,—it is not accidental death, but manslaughter. If the wrongful act was done under circumstances which shew an intent to kill, or do any serious injury in the particular case, or any general malice, the offence becomes that of murder. In the present instance the act was one of mere wantonness and sport, but still the act was wrongful, *it was a trespass*. The only question therefore is, whether the death of the party is to be fairly and reasonably considered as a consequence of such wrongful act; if it followed from such wrongful act as an effect from a cause, the offence is manslaughter, if it is *altogether* unconnected with it, it is accidental death.” *Case of Fenton and others, Lew. C. C. 179.*

Evidence of an injury recently after it was received.

In a case of manslaughter it appeared that the surgeon who had attended the deceased from the time he received the injury, which afterwards proved mortal, until the time he died, had left the country. A surgeon who was called in two or three days before the death of the deceased, and who assisted at the *post mortem* examination, was called as a witness, but he had not seen the deceased until five weeks

or more after he received the injury. The witness proved that the deceased died of an abscess in the head which had been produced by some external injury. The assistant of the surgeon who originally attended the deceased, also attended him at the time he received the injury, but he was not brought as a witness. *Taunton, J.* said the evidence was not sufficient. The assistant might have been brought and ought to have been brought in order that some account might have been given of the state of the injury recently after it was received; and directed an acquittal. *R. v. ———, Lancaster Spring Assizes, 1834. MS.*

Page 851. § 2.—In an indictment for manslaughter against *A.* and *B.*, *A.* was charged as principal in the first degree, and *B.* in the second degree. It appeared that the prisoners were riding fast along the highway when they met the deceased also on horseback. *B.* passed the deceased without doing any injury, but *A.*'s horse and deceased's came into collision, when they were both thrown and deceased was killed. Held that *B.* was not guilty as a principal in the second degree or otherwise. *R. v. W. Mastin and J. Mastin, 6 C. & P. 396. Patteson, J.*

Principal in the second degree.

III. When the Death is occasioned by resisting an Arrest.

(5.) As to the Legality of the Process.—Page 869.

If a warrant for the apprehension of a person omit his christian name it should assign some reason for the omission, and also give some distinguishing particulars of him. And therefore, where a warrant bearing a blank for the christian name of the person to be apprehended, and giving no reason for omitting it, but describing him only as the son of *J. S. L.*, (who had two sons) and stating the charge to be for assaulting *A. B.*, without particularizing the time, place, or any other circumstances of the assault; it was held that this warrant was too general and unspecific, and that a resistance to an arrest thereon, and killing the person attempting to execute it would not be murder. *R. v. George Hood, R. & M. C. C. 281.*

Blank warrants.

IV. Where the Homicide is committed in the Prosecution of some unlawful or improper Act.—p. 873.

If persons are at a prize fight, encouraging it by their presence, and death ensues to one of the combatants, they are guilty of manslaughter, although they take no active part in it. *R. v. Edward Murphy, 6 C. & P. 103. O. B. S.*

Prize fight.

But if the death ensues from violence unconnected with the fight itself, that is, not by blows given by the other combatant in the course of the fight, but is caused by persons breaking in the ring and striking with sticks,—in that case persons who were merely present are not thereby guilty of manslaughter. *Id.*

Blows unconnected with the fight.

V. Where the Death happens in the Commission of a lawful Act unlawfully or improperly performed.—Page 874.

Page 876. § 8.—In a case of manslaughter it appeared that the prisoner was going along a highway at a slow pace with his cart, in

Driving over persons.

Manslaughter, V. (*Medical Practitioners.*)

which he was sitting with his back to the horse, when the cart wheel passed over deceased (a child) and killed her. *Taunton, J.* said to the jury, "If you are satisfied that the prisoner was guilty of *gross* negligence (*slight* negligence will not do) you will say that he is guilty.—If you find that he was not guilty of *gross* negligence, you will say that he is not guilty." *R. v. Wm. Rainford, Lancaster Spring Assizes, 1834. MS.* And see *R. v. Allen and Clarke, 7 C. & P. 153. Addenda, post.*

In a case of manslaughter it appeared that the prisoner being on board a ship, and the deceased in a boat alongside, had a dispute, both of them being intoxicated. The prisoner, in order to get rid of deceased, pushed away the boat with his foot. The deceased reached out to lay hold of a barge to prevent his boat from drifting away,—overbalanced himself,—fell into the water and was drowned. And it was held that the case did not amount to manslaughter, *R. v. John Waters, 6 C. & P. 328. Park, J., and Patteson, J.*

Medical practitioners.

Gross ignorance.

Page 877. § 10.—If a person grossly ignorant of the art of midwifery which he professes, gives a child, whilst in the act of being born, a mortal wound in the head, as soon as the head appears, and before the child has breathed, he will, if the child is afterwards born alive, and dies thereof, be guilty of manslaughter. *R. v. Joseph Senior, R. & M. C. C. 346.* And *semble*, if there were malice he would be guilty of murder.

In a case of manslaughter it appeared that the deceased had been discharged from the Liverpool infirmary as cured, after having undergone salivation, and that he was recommended by another patient to go to the prisoner for an emetic to get the mercury out of his bones. The prisoner was an old woman who resided at Liverpool and occasionally dealt in medicines. She gave him a solution of white vitriol or corrosive sublimate, one dose of which caused his death, and she said she had received the mixture from a person who came from Ireland and had gone back again. *Bayley, J.* said, "I take it to be quite clear that if a person not of a medical education, in a case where professional aid might be obtained, undertakes to administer medicine which may have a dangerous effect, and thereby occasions death, such person is guilty of manslaughter. He may have no evil intention, and may have a good one, but he has no right to hazard the consequence in a case where medical assistance may be obtained. If he does so it is at his peril. It is immaterial whether the person administering the medicine prepares it or gets it from another." And the prisoner was convicted. *R. v. Nancy Simpson, 4 C. & P. 407. note (a.)*

Gross ignorance or criminal inattention.

A medical man is not chargeable with manslaughter unless he has been guilty of criminal misconduct, arising either from the grossest ignorance or the most criminal inattention. One or other of these is necessary to make him guilty of that criminal negligence and misconduct which is essential to make out a case of manslaughter. *R. v. John Williamson, 3 C. & P. 635. Lord Ellenborough, C. J.*

Where the treatment of a patient by a medical practitioner or other person, produces death, he is only liable upon an indictment for this offence, in case of gross ignorance—gross negligence—criminal inattention—gross or culpable rashness. *Id.* and *R. v. St. John Long, 4 C. & P. 423. Bayley, B., Bolland, B., and Bosanquet, J.*

If a person having a competent degree of skill and knowledge,

makes an accidental mistake in his treatment of a patient, through which mistake death ensues, he is not thereby guilty of manslaughter; but if, where proper medical assistance can be had, a person totally ignorant of the science of medicine takes upon himself to administer a violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy having been so administered, then he is guilty of manslaughter. If death be either occasioned or accelerated by medicines administered, and if the person who administered the medicines, in so administering have acted either with a criminal inattention or gross ignorance, he is guilty of manslaughter. *R. v. Joseph Webb, Mo. & Rob. 405. Lord Lyndhurst, C. B.*

Whether a person acting as a medical practitioner is licensed or unlicensed, is of no consequence, except in this respect, that he may be subject to pecuniary penalties. There may be cases in which both regular and irregular practitioners may be liable to an indictment for this offence, and there may be cases where, from the manner of the operation, &c. even malice might be inferred. *1 H. P. C. 420. R. v. Van Butchell, 3 C. & P. 629. Hullock, B. R. v. St. John Long, 4 C. & P. 398. Park, J. and Garrow, B. R. v. Webb, Mo. & Rob. 405. Lord Lyndhurst, C. B.*

Whether licensed or not, immaterial.

There is no distinction between the case of a person who consults the most eminent physician, and the cases of those whose necessities, or whose follies may carry them into any other quarter. It matters not whether the individual consulted be the president of the college of physicians, the president of the college of surgeons, or the humblest bone-setter of the village; be it the one or the other, he ought to bring into the case ordinary care, skill, and diligence. *Per Garrow, B. in R. v. St. John Long, 4 C. & P. 398.*

VI. Of the Indictment.—Page 878.

An indictment for manslaughter charged that *J. Cox* gave the deceased divers mortal bruises at *P.* in the county of *M.* and that the deceased languished and died at *D.* in the county of *K.* and that the prisoner was then and there aiding in the commission of the felony. It was held that the words then and there, referred with sufficient certainty to what was done in the first named place where the blows were given which constituted the felony. *R. v. James Hargrave, 5 C. & P. 170. Patteson, J.*

Certainty.

An indictment averred that deceased was riding upon horse-back, that the prisoner struck him with a stick, and the deceased, from a well grounded apprehension of a further attack, spurred his horse, whereby it became frightened, threw the deceased, giving him a mortal fracture, &c. whereof he died. It appeared in evidence that the prisoner struck the deceased, who rode away, the prisoner riding after him, and that on the deceased spurring his horse it winced and threw him. An objection was taken on behalf of the prisoner, 1st, that the fall ought to have been laid as the cause of the death, and not the blow with the stick and frightening the horse,—2dly, that the blow and the frightening were stated jointly to have caused the death, whereas the blow could not have caused it however remotely,—and 3dly, that the deceased was apprehensive of a further attack, of which there was no evidence. *Park, J. over-ruled the*

Variance.

Mischief, Malicious, I.

objections, and said, that in indictments for robbery, terror and force, are always *both* stated, but it is sufficient to prove *one of them*. *R. v. Hickman*, 5 C. & P. 151.

Where an indictment for manslaughter charged the improper administering of drugs to have been the cause of death, it is no objection to the indictment, that it appears by the evidence that the deceased would not have died of the administering alone if he had not also had a disease, or that it appears that the medicine *merely accelerated* the death. *R. v. Joseph Webb*, Mo. & Rob. 405. *Lord Lyndhurst*, C. B.

Evidence.

In a case of manslaughter, the indictment charged the wound to have been given by a blow with a hammer. There was no *direct* proof how the blow had been given; it appeared most likely to have been given with a hammer, but it *might* have been given by a fall against a door. Held notwithstanding the uncertainty, that it was a question for the jury to say by which means the injury was occasioned. *R. v. Martin*, 5 C. & P. 128. *Parke*, J.

Although all persons present at and sanctioning a prize fight where one of the combatants is killed, are guilty of manslaughter as principals in the second degree, yet they are not such accomplices as require their evidence to be confirmed, where they are called as witnesses against other parties charged with the manslaughter. *R. v. James Hargrave*, 5 C. & P. 170. *Patteson*, J.

Marriage.

Certain marriages legalized.

By 5 & 6 W. 4. c. 54. s. 1. Marriages celebrated before the passing of that act between persons within the prohibited degrees of *affinity* shall not be annulled for that cause. But this not to affect marriages between persons within the prohibited degrees of *consanguinity*.

Future marriages to be void.

By *sect. 2*. All marriages hereafter celebrated between persons within the prohibited degrees of consanguinity or affinity, shall be absolutely null and void to all intents and purposes whatsoever.

By *sect. 3*. The act is not to extend to *Scotland*.

As to marriages solemnized at *Hamburgh*, see the 3 & 4 W. 4. c. 45.

And see *Bigamp*, *ante*, p. 1506.

Mischief, Malicious.**I. Of Injuries to Manufactories and Machinery.**

Indictment.

Page 887. § 1.—In an indictment under 7 & 8 G. 4. c. 30. s. 3. for feloniously damaging warps of linen yarn with intent to destroy or render them useless, it is not necessary to allege specifically that the warps were prepared for or employed in carding, spinning, weaving, &c. or otherwise manufacturing goods. *R. v. William Ashton*, 2 B. & Ad. 750.

Destroying threshing machines.

Page 887. § 2.—Where the prisoner was indicted for destroying a *threshing machine*, and it appeared, that it had been previously taken

to pieces by the owner, by separating the arms and other parts of it, for the purpose of placing it in safety, but with a view to put it together again; and it was destroyed, whilst in this disjointed state; it was decided, that the offence was within the statute of the 7 & 8 G. 4. c. 30. s. 3. *R. v. Hutchins,* Reading Special Commission, December 1830, cor. Park, Bolland, and Patteson, Js.* And see *R. v. Tacey, ante, 1367.* So, where certain side-boards were wanting to the machine at the time it was destroyed, but which did not render it so defective as to prevent it altogether from working, though it would not work so effectually, as if those boards had been made good; it was held, that it was still a threshing machine, within the meaning of the statute. *R. v. Bartlett and others,* Salisbury Special Commission, cor. Vaughan, B. Parke and Alderson, Js. January 1831.* So also, where the owner removed a wooden stage belonging to the machine, on which the man who fed the machine was accustomed to stand, and had also taken away the legs; and it appeared in evidence, that though the machine could not be conveniently worked without some stage for the man to stand on, yet that a chair, or table, or a number of sheaves of corn, would do nearly as well, and that it could also be worked without the legs; it was held, that the machine was an entire one, within the act, notwithstanding the stage and legs were wanting. *R. v. Chubb, Salisbury Special Commission, January 6, 1831, cor. Vaughan, B. and Parke, J.*

An indictment under *sect. 4.* of the statute for breaking a machine may be sustained, although at the time the machine was broken it had been taken to pieces, and was in different places, only requiring the carpenter to put those pieces together again. *R. v. Mackerel and another, 4 C. & P. 448. Park, J. Bolland, B. and Patteson, J.*

Thus where a threshing machine was worked by water, the prosecutor, the owner, took the machine in pieces and put it into an adjoining barn for safety, leaving only the water-wheel standing, which was broken by a mob; it was held that the water-wheel was part of the threshing machine, (it being the part to which the power was applied and not the power itself,) and that the breaking the wheel was felony under *sect. 4.* of the statute. *R. v. Fidler and others, 4 C. & P. 449. Park, J. Bolland, B. and Patteson, J.*

Breaking part
of a machine.

But where the prosecutor had not only taken the machine to pieces, but had broken the wheel of it before the mob came to destroy it, for fear of having it set on fire and endangering his premises; and it was proved, that, without the wheel, the engine could not be worked; in this case it was held, that the remaining parts of the machine, which were destroyed by the mob, did not constitute a threshing machine, within the meaning of the statute. *R. v. West, Salisbury Special Commission, January 6, 1831, cor. Alderson, J.**

* The above cases of *R. v. Hutchins, R. v. Bartlett, and R. v. West,* are here inserted verbatim as inserted by Mr. Deacon in the Addenda, which has been cancelled.

Misdemeanor.

Page 891.

The word misdemeanor is *nomen collectivum*. The first count of an indictment charged a defendant with an assault with intent to commit a rape, and the second with a common assault. The record stated the finding of the jury that "the said *H. P.* is guilty of the misdemeanor and offence in the said indictment specified in manner and form," &c. And the judgment of the court was, that "the said *H. P.* for the said misdemeanor be imprisoned," &c. It was held upon writ of error that the word misdemeanor was *nomen collectivum*, and that the finding of the jury that the defendant was guilty of the misdemeanor, was in effect that he was guilty of the whole matter charged by the indictment; and therefore that the judgment was warranted by the verdict. *R. v. Henry Powell*, 2 B. & Ad. 75.

See *Attempts and Endeavours*, ante, p. 1497.

Murder.

II. Of the Means by which, and the Time when the Death is effected.

Means of death.

Page 900. § 4. — An indictment (for manslaughter) charged a wound (as the means of death) to have been given by a blow with a hammer, but there was no direct evidence how it had been given. The prisoner had at the time a hammer in his hand, but the surgeon stated that the wound *might* have been inflicted, either by a blow with a hammer, or by a fall against the lock or key of a door. *Park, J.* said to the jury, in summing up, — "The kind of instrument is immaterial. There is no count which describes the injury to have been occasioned by her being struck against the door in the struggle. If, therefore, you are of opinion, that the injury was occasioned by a fall against the door, produced by the act of the prisoner, it will not do; but, if you think that the injury was occasioned by a blow given with a hammer, or with any other hard substance held in the hand, then the indictment will be sufficiently proved." *R. v. Martin*, 5 C. & P. 128.

Poisoning.

Page 900. § 6. — An indictment (under 43 G. 3. c. 58.) charged the prisoner with having administered white arsenic to *E. D.* with intent to murder her. The prisoner had given a piece of cake containing the poison to the prosecutrix to eat, which she put into her mouth, but spit it out again, and did not swallow any part of it. The prisoner having been convicted, the case was reserved for the consideration of the judges, who were of opinion that a mere delivery to the woman did not constitute an administering; but they seemed to think *swallowing not essential*. *R. v. William Cadman*, R. & M. C. C. 114.

What is an administering.

This case is however very differently reported by *Mr. Carrington*, in his Supplement, p. 237; after stating the case nearly as above, it

is said, "This was held to be not sufficient; and the twelve judges were of opinion *that it was not an administering, unless the poison was taken into the stomach.*"

In the case of *R. v. Hannah Harley*, the above case of *R. v. Cadman* having been cited, *as reported in Ryan and Moody's Crown Cases*, Park, J. said—"There is another report of the case of *R. v. Cadman*, and the two reports differ materially. My memory is, that Mr. Carrington's report is accurate, and that the judges held that it was no administering unless the poison was taken into the stomach. If, according to the report you have cited, the delivery into the hand is not enough, and the taking into the stomach is immaterial, I can hardly say what would be enough in any case. If I call in a physician, and he writes his prescription, and I take the medicines, is not that an administering by him?" And his lordship afterwards added, "I have my own note of the case of *R. v. Cadman*. My note of the case is, that the judges were unanimously of opinion that the poison had not been administered, because it had not been taken into the stomach, but only into the mouth." *R. v. Hannah Harley*, 4 C. & P. 369.

Poison must be taken into the stomach to constitute an administering.
Remarks.

In the above case of *R. v. Cadman*, in *Ryan & Moody*, the marginal note, by the learned reporters, is—"To constitute the offence of administering poison, or other noxious substance, under 43 G. 3. c. 58. s. 1., some of the poison, or noxious substance must be *taken by*, or *applied* to the person to whom it is administered; merely giving it, if no part is taken or applied, is not sufficient, but if any part is taken, it is not necessary that it should be swallowed." This note and the decision, as there reported, seem to be entirely inconsistent with the facts of the case as stated in *both* of the reports. It is clear that the prisoner gave the poisoned cake to the prosecutrix, urging her to eat it, and there can be no doubt, that if she had done so, she would have been his agent, and he would have been guilty of administering. It is also clear that the prosecutrix put the poison into her mouth at the solicitation of the prisoner, and if swallowing be not essential, what more could possibly be necessary to constitute an administering? The marginal note seems to draw a distinction between poison *taken* and poison *swallowed*, which hardly appears to be warranted by the decision as reported, and if it were, it does not seem to be very easy to define what the difference consists of, if indeed there be any.—It is difficult to say how such poison could be taken without being swallowed. Neither does the case appear to have decided anything respecting poison "*applied*" to a person.

Some error must have crept into the report of this case by Messrs. *Ryan & Moody*, and it is noticed at greater length, because many recent publications have stated the case from this report, and evidently from the marginal note of it.

The words of the statute, under which the prisoner was indicted, are—"If any person shall wilfully, maliciously, and unlawfully administer to, or cause to be administered to, or taken by any of his majesty's subjects, any deadly poison, or other noxious and destructive substance, or thing," with intent to murder, &c.

In order to constitute an administering, it is not necessary that there should be a delivery by hand. Thus where a servant put poison into a pot of coffee which was for her mistress' breakfast, placed it at the fire and told her mistress she had put it there for her

Delivery by hand not necessary.

breakfast; the mistress having taken some of the poisoned coffee, it was held that there was an administering within the meaning of 9 G. 4. c. 31. s. 11. and also that it was a causing to be taken within the meaning of the same section of that act. *R. v. Hannah Harley*, 4 C. & P. 369. *Park, J.*

Attempt to administer.

So in a case where the prisoner was indicted for attempting to administer poison to *E. D.* his own bastard child, it appeared that the mother of the child had bought some magnesia for the purpose of giving it to the child, and had given one dose to it. The prisoner came to the house where the mother and child were living and took an opportunity, when the mother was out of the room, of mixing the magnesia with arsenic. It having been objected that if the poison had been taken it would not have been an administering, *Lord Lyndhurst, C. B.* said, if the prisoner mixed the arsenic with the magnesia and placed it in such a situation that it would probably be administered to the child, and with intent that it should be taken by the child, that would be an attempt to administer within the meaning of the act of parliament. *R. v. Rob. Yates, Lancaster Summer Assizes, 1834. MS.*

Poison taken by the person intended, or any other.

In a case where the prisoner was indicted for administering poison to the prosecutrix, it appeared that the prisoner was at the shop of a *Mrs. H.* buying salt, and shortly after she left the shop *Mrs. H.* found a parcel on the counter containing half a pound of moist sugar and an ounce of tea. The parcel was directed "to be left at *Mrs. Daws, Fownhope*," *Mrs. H.* sent the parcel to *Mrs. Davis*, who used some of the sugar, which made her very ill, and was afterwards found to contain corrosive sublimate. *Gurney, B.* in summing up said, "The question is, whether the prisoner laid this poison on the shop counter intending to kill *any one*? If it was intended for *Mrs. Daws*, and finds its way to *Mrs. Davis*, and she take it, the crime is as much within this act of parliament as if it had been intended for *Mr. Davis*. If a person sends poison with intent to kill one person, and another person takes the poison, it is just the same as if it had been intended for such other person." *R. v. Celia Lewis*, 6 C. & P. 161.

III. Of Aiders, Abettors, and Accessories.—Page 902.

Laying poison.

In a case of poisoning, if one layeth poison for one, or infuse it into broth, or the like, although he be not present when the same is taken,—and either the party intended, or any other is poisoned,—yet is he a principal felon, and guilty of murder, 3 *Inst.* 138.

And in such a case both the principal and procurer, or accessary, may be absent. *Id.*

All persons present are principals.

In a case where the prisoners were indicted for maliciously wounding, it appeared that the prisoners had been out poaching when the prosecutor (who was a gamekeeper) and his assistant met them. The prisoners knocked the prosecutor and his assistant down and stunned them. When the prosecutor came to his senses he heard one of the prisoners say, "damn 'em, we have done 'em both," and when the prisoners had left the prosecutor two or three paces, one of them returned and wounded him in the leg, and then ran away.

It was objected (amongst other things) that the wounding was the act of one alone, and the prisoners having been convicted, the case was reserved for the opinion of the judges, who held the conviction to be right. *R. v. James Warner and others, R. & M. C. C. 380.*

Page 904. § 8.—A prisoner was indicted for wounding with intent to murder. It appeared that the prosecutor and another man were employed as private watchmen. In the course of the night they saw two carts driven by the prisoner and another man, which contained apples, and suspecting them to have been stolen, they walked on with the prisoner and his companion, intending to accompany him until they could obtain assistance to take them into custody. The prisoner's companion and the prosecutor being *at some distance* from the prisoner and the other watchman, and while they were all walking along, the prisoner's companion stepped back and wounded the prosecutor severely. *Garrow, B.* "To make the prisoner a principal, the jury must be satisfied that when he and his companion went out with a common illegal purpose of committing the felony of stealing apples, they also entertained the common guilty purpose of resisting to death, or with extreme violence, any persons who might endeavour to apprehend them; but if they had only the common purpose of stealing apples, and the violence of the prisoner's companion was merely the result of the situation in which he found himself, and proceeded from the impulse of the moment without any previous concert, the prisoner will be entitled to an acquittal." *R. v. Collison, 4 C. & P. 565.*

Prosecution of a common purpose.

Page 905. § 15.—If a woman being with child takes a drug, (which was given her by another person for that purpose) in order to procure miscarriage, and she dies from the effects, she will be guilty of self-murder. And the person who furnished her with the drug for that purpose, if absent at the time it is taken, will be guilty as an accessory to that murder before the fact. *R. v. Henry Russell, R. & M. C. C. 356.*

Accessory to self-murder.

IV. *Where the Death is inflicted under slight Provocation.*—p. 908.

"It is not every slight provocation, *even by a blow*, which will, when the party receiving it strikes with a deadly weapon, reduce the crime from murder to manslaughter. But it depends upon the time elapsing between the blow and the injury, and also whether the injury was inflicted with an instrument at the moment in the possession of the party, or whether he went to fetch it from another place." *R. v. Daniel Lynch, 5 C. & P. 324. Lord Tenterden, C. J.*

Slight blow.

Page 911. § 10.—In a recent case the prisoner was indicted for murder by stabbing. It appeared that the deceased had, at his mother's request, turned the prisoner out of her house, in doing which he gave the prisoner a kick, upon which the prisoner said to the deceased he would make him remember it. The prisoner (who was a butcher) instantly went to his lodgings, which were about two or three hundred yards distant, where he was heard to go into a pantry where he kept some knives, and then hastily return back into the street. Within five minutes after the prisoner left the house of deceased's mother, the deceased followed the prisoner to give him his

Provocation no excuse where there is time to cool.

Murder, V. (Mutual Combat.)

hat which he had left behind him, and they met about ten yards from the prisoner's lodging. Here they stopped for a short time, where they were heard talking together, but without anger, the deceased desiring the prisoner not to come down again to his mother's house, and the prisoner insisting that he would. After they walked on together for about fifteen yards in the direction of the mother's house, the deceased gave the prisoner his hat, when the latter exclaimed with an oath that he would have his rights, and instantly stabbed the deceased with a knife or some sharp instrument in two places,—a slight wound in the shoulder and a mortal wound in the belly. As soon as the prisoner had stabbed the deceased, he said he had served him right, and instantly ran back to his lodging, where he was heard again to go into the pantry, and then to go to bed. He was apprehended shortly afterwards, when no knife or other instrument was found upon him, but all his knives were found in the pantry. *Tindal, C. J.*, told the jury, that if they were satisfied that the death of the deceased had been occasioned by the prisoner having stabbed him with a knife or some other sharp instrument, of which there could be little doubt, the remaining and principal question for their consideration would be, whether the mortal wound was given by the prisoner, while smarting under a provocation so recent and so strong, that the prisoner might be considered not at the moment the master of his own understanding, in which case the law, in compassion to human infirmity, would hold the offence to amount to manslaughter only; or whether there had been time for the blood to cool and for reason to resume its seat before the mortal wound was given, in which case the crime would amount to wilful murder. That in determining this question the most favourable circumstance for the prisoner was the shortness of time which elapsed between the original quarrel and the stabbing by the prisoner; but on the other side the jury must recollect that the weapon which inflicted the fatal wound was not at hand when the quarrel took place, but was sought for by the prisoner from a far distant place. It would be for them to say whether the prisoner had shown thought, contrivance, and design in the mode of possessing himself of this weapon and again replacing it, immediately after the blow was struck; for the exercise of contrivance and design denoted rather the presence of judgment and reason than of violent and ungovernable passion." And the prisoner was convicted of murder. *R. v. George Hayward*, 6 C. & P. 157.

V. Where the killing is in mutual Combat..

Fighting up
and down.

In a case of manslaughter it was proved that the prisoner and the deceased had been "fighting up and down," and that the deceased died in consequence of the injuries he sustained in the fight. And *Bayley, J.*, said "fighting up and down is calculated to produce death; and the foot is an instrument likely to produce death. If death happens in a fight of that description it is murder and not manslaughter." *Thorpe's case*, *Lew. C. C.* 171.

But fighting with fists only or in such a way as not likely to cause death, will, if death ensue, only make the party causing the death guilty of manslaughter. *Whiteley's case*, *Lew. C. C.* 173.

VI. *Where the death happens from resistance to an arrest, or to any legal or military authority.*

See *ante*, Arrest, ~~M~~aiming, and ~~M~~anslaughter.

(1.) *On Criminal and Civil Arrests.*

Page 918. § 13.—Where a game keeper attempting lawfully to apprehend a poacher is met with violence, and the game keeper in opposition to such violence strikes the poacher in self-defence, and to diminish the violence illegally used against him only,—and not vindictively to punish,—if the game keeper is killed by the poacher it is murder in him. *R. v. William Ball, R. & M. C. C. 330. R. v. James Ball and others, R. & M. C. C. 333.*

Arresting poachers.

When game keepers or other persons authorized under 9 G. 4. c. 69., apprehend persons *found committing offences* against that act, it is not necessary that they should give notice of the cause of arrest, —the circumstances constituting sufficient notice. *R. v. Christopher Payne and others, R. & M. C. C. 378.*

Need not give notice of cause of arrest.

Upon an indictment for maliciously wounding, it appeared that the prosecutor (a game keeper) and his assistant, being out on duty, heard reports from guns in a wood, they then went into a road, (not a part of their employers manor,) and met the prisoners coming along the road in the direction from the wood. The prosecutor said to them, “so you have been knocking them down; you are a pretty set of people to be out so late at night.” One of the prisoners had a gun, and the prosecutor said to his assistant mind the gun, upon which the assistant took hold of the gun and took the percussion cap off, but did not take it from the prisoner who had it. The prosecutor committed no assault upon any of the prisoners, and the assistant did nothing but take hold of the gun. The prosecutor and his assistant were then knocked down and stunned, and the prosecutor was wounded in the leg. It was objected that there was such a provocation as would have reduced the crime to manslaughter if death had ensued, and the prisoners having been convicted, the case was reserved for the opinion of the judges, who held that the conviction was right. *R. v. James Warner and others, R. & M. C. C. 380. 5 C. & P. 525. S. C.*

IX. *Indictment, Plea, and Evidence.*—p. 927.

An indictment charged the prisoner with having mixed a quantity of sponge (cut into small pieces) with milk, and giving it to her husband with intent to poison him. But an objection was taken that the indictment did not allege that the sponge was of a deleterious or poisonous nature. And *Alderson, J.*, held the objection good, and the prisoner was acquitted. *R. v. Elizabeth Powles, 4 C. & P. 571.*

Poisoning.

Page 927. § 3.—In an indictment for murder, or manslaughter, when the cause of death is knocking a person down with the fist upon a stone, or other substance, and the mortal wound is occasioned by such stone, or substance; the charge in the indictment should agree precisely with that fact. Therefore, a charge, that the prisoner, with

Statement of mode of death.

Murder, IX. (Indictment & Evidence.)

a stone which he held in his right hand, gave and struck a mortal blow; will not be sufficient; especially, if there be no statement that the prisoner knocked the deceased down on the ground. *R. v. Matthew Kelly, Ry. & M. C. C.* 113. *R. v. Henry Thompson, Id.* 139.

Description of wounds.

Page 928. § 5.—In an indictment for murder, if the depth of a wound is stated, it need not be stated accurately, and a wound need not be described at all. *R. v. Tomlinson, 6 C. & P.* 370. *Patterson, J.*

And in the same case the learned judge (after conferring with *Park, J.*) said, “My brother *Park* recollects the case of *R. v. Mosley, (R. & M. C. C.* 97.) perfectly well, and informs me that it was very much discussed, and that the ground of the decision was, that as common sense did not require the length, depth, and breadth of the wounds to be stated, it was not necessary that they should be stated.” *Id.*

Suffocation.

An indictment for murder charged that the prisoner upon *M. D.*, the deceased, made an assault, and “with both her hands about the neck of the said *M. D.*, the said neck and throat of the said *M. D.*, then and there feloniously, &c., did grasp, squeeze, and press, and by the grasping, squeezing, and pressing aforesaid,” did suffocate and strangle the deceased. It was proved that the death of the deceased had been caused by the pressure of a hand on the back of the neck, another hand being held over the mouth. And it was held that this was the same kind of death, and that if the death were proved to be by suffocation at all it would be sufficient. And it was also held that about the neck means round it, and not merely near it, and therefore that the indictment was sufficient. *R. v. Bridget Culkin, O. B. S.* 5 C. & P. 121. *Park, J., Parke, J., and Bolland, B.*

By a blow.

Where an indictment charged the death of the deceased to have been caused by a blow given with a hammer, held in the hand, it was held sufficient if it were proved that the blow was given by any other hard substance held in the hand. *R. v. Martin, 5 C. & P.* 128. *Park, J.*

By cutting the throat.

In a case of murder the indictment charged the offence to have been committed by cutting the throat. A surgeon proved that the jugular vein was divided, but not the carotid artery, and that what he called the throat had not been cut, the wound not having extended so far round the neck. Upon an objection being taken to this as a variance, *Patterson, J.* said, “The question is whether the term ‘throat,’ in the indictment, is to be confined to that part of the neck which is scientifically called the throat, or whether it means that which is commonly called the throat,—I am clearly of opinion that it means the latter, and I do not entertain the slightest doubt about it.” *R. v. Hester Edwards, 6 C. & P.* 401.

What is the throat.

Evidence.

Page 931. § 19.—In a case of murder the indictment stated that the prisoner had been delivered of a female bastard child which was born alive, and charged the prisoner with strangling it with a cord. It was proved by medical men that from the state of the child's lungs it must have breathed, but whether during the progress of parturition or after its birth it was impossible to say. And it was held that in order to convict, the jury must be satisfied that the child was born alive,—that being born means, that *the whole* body is brought into the world,—and that respiration during the progress

Child must be wholly born alive.

of the birth was not sufficient. *R. v. Ann Poulton, O. B. S. 5 C. & P. 329. Littledale, J.*

A child having breathed before it is born, is not sufficiently life to make the killing of the child murder. *There must be an independent circulation* in the child, or the child cannot be considered alive for that purpose. *R. v. Enoch and Pulley, 5 C. & P. 539. Parke, J.*

Breathing during parturition is sufficient.

A child must be actually wholly in the world in a living state to be the subject of a charge of murder, but if it have been wholly born and is alive, it is not essential that it should have breathed at the time it was killed, as many children are born alive and yet do not breathe for some time after their birth. *R. v. Eliza Brain, 6 C. & P. 349. Park, J.*

Breathing not necessary.

A declaration by a prisoner that he is an *Irishman* and came from *Kilkenny*,—unexplained is as against himself evidence to go to the jury in proof of an allegation in the indictment that he was a subject of his Majesty. *R. v. Helsham, O. B. S. 4 C. & P. 394. Bayley, J. and Bosanquet, J.*

Declaration of prisoner as to where he was born.

Where an indictment states a child (murdered) to have been a bastard, it is necessary to prove that it was so. And in the same case it having been proved that the prisoner (the mother of the child) had said that she had never told any one of her situation but the father of the child,—that he lived a longway in the country,—that his name was *J. H.*—and that he had lately got married:—it was held sufficient evidence to prove that the child was a bastard. *R. v. Ann Poulton, 5 C. & P. 329. Littledale, J.*

Bastard.

Page 932. § 20.—*Clewes* was indicted, at the *Worcester March* assizes 1830, for the murder of *Richard Hemmings*, committed so far back as on the 25th of *June* 1806. It appeared, that in the year 1806 great enmity subsisted between *Mr. Parker*, the rector of the parish of *Oddingley*, and his parishioners, about tithes; and that the prisoner had frequently used expressions of malice and hatred towards *Mr. Parker*, and had been known to say, that he would give 50*l.* to have him shot; and it happened shortly afterwards, that *Mr. Parker* was actually shot by the deceased *R. Hemmings*, who was detected in the fact. It was imputed, that the persons who had employed *Hemmings* to commit this murder, the prisoner being charged as one of them, fearing they should be discovered, had themselves been guilty of the murder of *Hemmings*. It was proved, that on the 28th of *December* 1829, the bones of *Hemmings* were accidentally found buried in a barn, which was occupied by the prisoner at the time of the supposed murder in 1806; and the wife of *Hemmings*, who was examined as a witness on the trial, clearly identified a carpenter's rule, and the remains of a pair of shoes, as belonging to him in his lifetime, which were found buried with the bones; and she also identified the skull of the deceased, by something very remarkable about his teeth. It was then proved, (after an objection made that the evidence was irrelevant, but which was overruled by *Littledale, J.*) that *Hemmings* really was the person, by whom *Mr. Parker* was murdered. It appeared, also, that after the prisoner's apprehension, a clergyman (who was likewise a magistrate) told the prisoner, that if he was not the man who gave *Hemmings* the fatal blow, he, the clergyman, would use all his endeavours and influence to prevent any ill con-

Confession.

Murder, X. (Venue, Trial, & Verdict.)

sequences from falling on him, if he would only disclose what he knew of these *Oddingley* murders; and the clergyman further told him, that there were so many living persons concerned in the transaction, that it would be sure to be made known by some or other of them. The clergyman admitted, that he said this, to have the effect of working on the prisoner's mind, and to induce him to make a confession. But he further stated, that having applied to the secretary of state on the subject, and having received for answer that mercy could not be extended towards the prisoner, he communicated this answer to him. After this, it appeared that the prisoner sent for the coroner, desiring to make some statement to him; but the coroner, before the prisoner stated any thing, told him that any confession would be produced against him, and that no hope or promise of pardon could possibly be held out to him. It was objected, that a confession under these circumstances was not admissible, inasmuch as the prisoner might have entertained some hope that the clergyman, from what he had said, would still make some endeavours in his favour; and that he might also have been induced by the fear, that if he himself did not confess, some one else would tell before him; but this objection was also very properly overruled. The prisoner's confession to the coroner was then read, in which he acknowledged that he was *present* at the murder of *Hemmings*, which took place in the prisoner's own barn! but that the murder was committed by a person named *Taylor*, who was since dead; and that he, the prisoner, took *no part* in it, and was *wholly unconscious* of any injury being intended towards the deceased. It was objected again, that there was not sufficient evidence in this case to go to the jury; as the only thing to connect the prisoner with the murder of *Hemmings* was his own confession, in which, though he admitted he was present, yet he declared, also, that he was taking no guilty part in the transaction. But *Littledale, J.* held, that there was evidence sufficient to go to the jury; for that the jury, if they thought proper, might believe one part of the confession, and disbelieve another. In summing up, however, he told them, that they must take the prisoner's confession altogether; observing, that though the prisoner acknowledged he was present, yet he also alleged that he did not act in the murder of *Hemmings*; and that there was no other evidence in the case, that the prisoner did any thing more, than what was stated in his confession; upon which the jury acquitted the prisoner! *R. v. Clewes, 4 C. & P. 221.*

See *Murder, X. infra.*

X. Of the Venue, Trial and Verdict.

Murder committed abroad.

Page 935. § 6.—If a person is indicted for murder under 9 G. 4. c. 31. s. 7. it is necessary that the indictment should contain an allegation that the prisoner and the deceased were subjects of his Majesty. *R. v. Helsham, O. B. S. 4 C. & P. 394. Bayley, J. and Bosanquet, J.*

And where a bill of indictment under that section of the statute stated the murder to have been committed "at *Boulogne* in the

kingdom of *France*, to wit at the parish of *Saint Mary-le-Bow*, in the ward of *Cheap*," &c. The grand jury having made an objection, the court ordered the *London venue* to be struck out. *Id.*

XI. *Judgment and Execution.*—Page 938.

By 2 & 3 *W. 4. c. 75. s. 16.* So much of the 9 *G. 4. c. 31.* as authorizes the court to direct the body of a person convicted of murder to be dissected is repealed, and authorizes the court to direct bodies to be hung in chains, or to be buried in the precincts of the prison.

And by 4 & 5 *W. 4. c. 26. s. 1.* So much of 9 *G. 4. c. 31.* and of 2 & 3 *W. 4. c. 75.* as authorizes the court to direct bodies to be dissected or hung in chains is repealed.

See *Execution, ante*, p. 1603.

Raby.

Page 946.

By the 2 & 3 *W. 4. c. 40. s. 33.* It is enacted that the petition for probate of will or letters of administration of the effects of any deceased petty officer, or seaman, or non-commissioned officer of marines, or marine, or for obtaining a check or certificate in lieu of probate or letters of administration, in case of claim where the deceased's assets shall not exceed 32*l.* and 20*l.* respectively, shall be addressed to the inspector of seamen's wills, and shall be forwarded to the secretary of the admiralty;—and if any person shall subscribe, transmit, utter, or publish any false petition or application to the said inspector knowing the same to be false, in order to obtain or to enable any other person to obtain any check or certificate in lieu of probate or letters of administration as aforesaid, every person so offending shall be guilty of felony, and shall be liable to be transported not exceeding fourteen years, nor less than seven years, or to be imprisoned not exceeding three years, nor less than one year.

And see *Forgery*, III., (F) (a) *ante*, p. 1617.

Petition for probate of seamen's will, &c. to be addressed to inspector.

Subscribing or uttering false petitions, &c.

Felony.
Punishment.

Nuisance.

I. *What is a Public Nuisance.*—Page 949.

Corrupting the water of a river with the refuse from a gas manufactory, whereby the quantity of fish is diminished, and a considerable number of fishermen are thrown out of employment, is not alone sufficient to sustain an indictment for a nuisance. *R. v. Medley and others*, 6 *C. & P.* 292. *Lord Denman, C. J.* But rendering the water of a river unfit for use by such means is a public nuisance. *Id.*

Shooting grounds are indictable nuisances, as causing idle and disorderly persons to meet, discharge fire-arms, &c. If a person

Corrupting the water of a river.

Shooting grounds.

Nuisance, II. (*Remedy*.)

Probable consequence of act.

collects together a crowd of people to the annoyance of his neighbours, that is a nuisance for which he is answerable. In order to render a defendant liable it is not necessary that his object was to create a nuisance, nor is it necessary that a nuisance must be the necessary and inevitable result of his act. If a nuisance be the *probable* consequence of his act, he is answerable as if it were his actual object. If the experience of mankind must lead any one to expect the result he will be answerable for it. *R. v. Charles Moore*, 3 B. & Ad. 184.

Exhibiting effigies in the windows.

If a person exhibit effigies at his windows, and thereby attract a crowd to look at them, which causes the footpath in the street to be obstructed, so that the public cannot pass as they ought to do, that is an indictable nuisance, and it is not necessary that the effigies should be libellous. Nor *semble*, to shew that the crowd consisted of idle, disorderly, or dissolute persons. *R. v. Carlile*, O. B. S. 6 C. & P. 636. *Park, J., Bolland, B.*

II. Of the Remedy by Abatement and Indictment.

Where an indictment will lie.

Page 953. § 3.—Where a particular kind of erection is in one section of an act of parliament made a common nuisance, an indictment may be maintained for a nuisance under that section, although in another section of the same act a summary power of conviction for such nuisance is given to two justices. *R. v. Wm. Gregory*, 5 B. & Ad. 555.

Where an action on the case will lie at the suit of an individual owner of land against persons for altering a water course; an indictment for a nuisance may be maintained if the wrongful act affects the public. *R. v. Trafford and others*, 1 B. & Ad. 874.

Master liable for the acts of his servant.

Upon an indictment for a nuisance it was held that the directors, &c. of a public company are liable for the acts of their servants, having a general authority to manage their works, although they are personally ignorant of the particular mode of management, and although such mode be different from the original method, which the directors had no reason to suppose was discontinued. *R. v. Medley and others*, 6 C. & P. 292. *Lord Denman, C. J.*

In what cases a reversioner is liable.

If a nuisance be created, and a man purchase the premises with the nuisance upon them, though there be a demise for a term at the time of the purchase, so that the purchaser had no opportunity of removing the nuisance, yet by purchasing the reversion he makes himself liable for the nuisance. But if after the reversion is purchased the nuisance be created by the occupier, the reversioner incurs no liability; yet, in such a case, if there were only a tenancy from year to year, or any short period, and the landlord chose to renew the tenancy after the tenant had created the nuisance, that would make the landlord liable. The liability of a tenant to his landlord, *ratione tenuræ*, to abate a nuisance, cannot exonerate the landlord. The receipt of rent by a landlord from the tenant of the premises upon which a nuisance is erected, is an upholding and continuing of the nuisance, and a landlord receiving a profit from the use of an erection which is a nuisance is answerable for the nuisance. *R. v. Pedley*, 1 A. & E. 822.

Where a nuisance is the result of several acts done separately by different persons, nevertheless, if the grievance is the joint effect of all their several acts, such persons may all be included in one indictment, stating the acts to have been done *severally*. *R. v. Trafford and others*, 1 B. & Ad. 874.

Oaths.

I. Of Oaths in General.—Page 956.

By 3 & 4 W. 4. c. 49. s. 1. Quakers and Moravians are permitted to make a solemn affirmation or declaration, instead of taking an oath, in all places and for all purposes whatsoever where an oath is or shall be required, either by the common law or by any act of parliament already made or hereafter to be made; such affirmation or declaration to be of the same force and effect as an oath. And persons affirming or declaring falsely, are to be liable to the same penalties as persons convicted of perjury. The form of the affirmation or declaration to be as follows:—

Quakers and Moravians may affirm or declare instead of taking an oath.

“ I, A. B. being one of the people called Quakers (*or one of the persuasion of the people called Quakers, or of the united brethren called Moravians, as the case may be*) do solemnly, sincerely, and truly declare and affirm.”

Form.

And by *sect. 2.* the form of the affirmation to be taken in lieu of the oath of abjuration, shall be as follows:—

“ I, A. B., being one of the people called Quakers (*or one of the persuasion of the people called Quakers, or of the united brethren called Moravians, as the case may be*) do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that King *William* is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; And I do solemnly and sincerely declare, that I do believe that not any of the descendants of the person who pretended to be Prince of *Wales* during the life of the late King *James* the Second, and since his decease pretended to be and took upon himself the style and title of King of *England*, by the name of *James* the Third, or of *Scotland* by the name of *James* the Eighth, or the style and title of King of *Great Britain*, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging, and I do renounce and refuse any allegiance or obedience to any of them, and I do solemnly promise, that I will be true and faithful, and bear true allegiance to King *William*, and to him will be faithful against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity; And I will do my best endeavour to disclose and make known to King *William* and his successors all treasons and traitorous conspiracies which I shall know to be made against him or any of them; And I will be true and faithful to the succession of the crown against the descendants of the said *James*, and against all other persons whatsoever, which succession, by an act intituled ‘ An Act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands limited to the Princess *Sophia*, electoress and duchess dowager of *Hanover*, and the heirs of her

Form of affirmation in lieu of oath of abjuration.

body being Protestants,' and all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever; And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly."

Separatists may affirm.

By 3 & 4 W. 4. c. 82. s. 1. Every person for the time being, belonging to the sect called Separatists, who shall be required upon any lawful occasion to take an oath in any case where, by law, an oath is or may be required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following, viz. :—

Form.

"I, A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of an oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect; and I do also in the same solemn manner affirm and declare ———"

Such affirmation to be of the same force and effect as an oath.

And by *sect. 2.* persons affirming falsely are subjected to the same punishment as for perjury.

The two acts which are next to be noticed are most disgraceful specimens of bungling legislation. Our legislators might surely condescend to apply a little ordinary care as to the correctness of the references made in one act to the dates, &c. in another. The 5 & 6 W. 4. c. 62. recites some supposed mistakes committed in a previous act (c. 8.) of the same session which it repeals, but it turns out that the blunders have been committed in *mis-reciting* the dates and supposed mistakes of the previous act.

By the 5 & 6 W. 4. c. 8., (royal assent 12th June, 1835,) several provisions were made for the abolition of oaths in various cases, and the substitution of declarations and the suppression of extra-judicial oaths, but this act was only in force from the 15th June, 1835, until the 9th September, 1835, when it was repealed by the 5 & 6 W. 4. c. 62.

The 5 & 6 W. 4. c. 62. ss. 2, 3, and 4., empower the lords of the treasury to substitute declarations in lieu of oaths required in various departments of the public service.

By *sect. 5.* Any person making any such declaration, and making therein any false statement as to any material particular, shall be guilty of a misdemeanor.

By *sect. 6.* The oath of allegiance is still to be administered and taken in any case in which the same is required to be taken by any person appointed to any office.

By *sect. 7.* The act not to affect oaths in courts of justice.

By *sect. 8.* The Universities of Oxford and Cambridge are enabled to substitute declarations in lieu of oaths.

By *sect. 9.* Churchwardens and sidesmen are to make and subscribe declarations in lieu of oaths.

By *sect. 10.* Declarations are substituted for oaths required by turnpike road acts, and acts for paving, lighting, watching, or improving towns or places.

By *sect. 11.* Persons seeking to obtain letters patent for inventions are to make declarations to the same effect as the oaths, affirmations, and affidavits heretofore required.

By *sect. 12.* Declarations are substituted for oaths, affirmations, and affidavits required by the acts relating to pawnbrokers.

By *sect. 13.* It shall not be lawful for any justice of the peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit, or solemn affirmation, touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance by some statute in force at the time being; provided always, that nothing therein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the houses of parliament or any committee thereof respectively, nor to any oath, affidavit, or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively.

Justices not to administer oaths, &c. touching matters whereof they have no jurisdiction.

Exceptions.

By *sect. 14.* No oath or affidavit is to be taken or made at the Bank of *England* on the transfer of stock, but a declaration to the same effect is to be made in lieu thereof.

By *sect. 15.* Declarations are substituted for the oaths and affidavits required by 5 *G. 2. c. 7.*, and 54 *G. 3. c. 15.*

By *sect. 16.* The execution, &c. of any will, codicil, deed, or instrument in writing may be verified by a declaration in writing.

By *sect. 17.* The act shall apply to suits on behalf of his Majesty.

By *sect. 18.* After reciting that it might be necessary and proper in many cases not therein specified to require confirmation of written instruments, or allegations, or proof of debts, or of the execution of deeds or other matters,—it is therefore further enacted, that it shall and may be lawful for any justice of the peace, notary public, or other officer, than by law authorised to administer an oath, to take and receive the declaration of any person voluntarily making the same before him, in the form in the schedule to that act annexed; and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor.

Voluntary declarations may be made in the form prescribed.

False declaration a misdemeanor.

By *sect. 19.* The same fees payable for oaths, &c. are to be paid for declarations substituted in lieu thereof.

By *sect. 20.* Declarations required by that act shall be in the form prescribed in the Schedule.

By *sect. 21.* It is enacted that in any case where “a declaration is substituted for an oath under the authority of that act, or by virtue of any power or authority thereby given, or is directed and authorized to be made and subscribed under the authority of that act, or by virtue of any power thereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.”

Making a false declaration.

Misdemeanor.

By *sect. 22.* The act to commence from and after the 1st October 1835.

Form of Declaration.

" I A. B. do solemnly and sincerely declare that _____; and I make this solemn declaration conscientiously, believing the same to be true, and by virtue of the provisions of an act made and passed in the session of parliament held in the *fifth* and *sixth* years of the reign of his present Majesty, intituled 'An Act to repeal an act of the present session of parliament, intituled An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits; and to make other provisions for the abolition of unnecessary oaths.'"

As to oaths to be taken by sheriffs of cities, &c. See *post*, tit. *Sheriff*.

II. Of Administering or taking an Unlawful Oath.—Page 957.

The enacting part of the 37 G. 3. c. 123. is not restrained by the preamble. *R. v. Brodrigg*, 6 C. & P. 571. *Holroyd, J. R. v. Loveless and others*, Mo. & Rob. 349. *Williams, B.* 6 C. & P. 596. *S. C.*

What is an unlawful oath.

An oath that the party taking it would not make buttons under a certain price, and would keep all the secrets of the lodge, is an unlawful oath within the meaning of the 37 G. 3. c. 123. And administering an oath of that description, or not to reveal any of the secrets of any association, is an offence within the meaning of that statute. *R. v. Ball and others*, 6 C. & P. 563. *Williams, B.*

To constitute an oath an offence within the meaning of that statute, it is not necessary that it should be administered with any mutinous or seditious object. *R. v. Brodrigg*, 6 C. & P. 571. *Holroyd, J. R. v. Lovelass and others*, Mo. & Rob. 349. 6 C. & P. 596. *Williams, B.*

An oath respecting an illegal act, to be within the meaning of the statute, need not be respecting a *criminal* act, but it is sufficient if the act be illegal,—as a mere civil trespass. *R. v. Brodrigg*, 6 C. & P. 571. *Holroyd, J.*

If an oath administered was intended to make the persons to whom it was administered believe themselves under an engagement, it is equally within the meaning of the act, whether the book used be a Testament or any other book. *Id.*

Indictment.

It is no objection to an indictment under this statute, that it charges a *certain oath* to have been administered to *several* persons, and which it was proved was administered to them *successively*. *Id.*

If a person is indicted for *doing* an illegal act, the act itself must be set forth in the indictment, in order that the court may see that what the defendant has done is illegal. But where a party is charged with the administration of an oath not to give evidence against his associates in doing an illegal act, the offence is not the illegal act, but the administration of the oath which preceded it. And if the oath itself, which is the offence for which the defendant is indicted, be sufficiently set out in the indictment that is

all the rules of pleading require. And in an indictment for administering an unlawful oath, the illegal act sworn to be kept secret is no part of what the prisoner did,—it is not the offence itself but something collateral or at least extrinsic. It is easy to suppose a case where the illegal object is not revealed even to the parties sworn, until they have taken the oath not to divulge it. If a person were overheard administering such an oath, there can be no doubt he would be indictable, and yet it might be impossible to learn the object so precisely as to set it forth upon the indictment. *Id.*

See *R. v. Moors*, ante, p. 654.

Officer.

Page 961.

With respect to public officers, the maxim is *omnia presumuntur esse rite acta donec probetur in contrarium*. So a person acting in any public capacity is presumed to be duly authorized without producing his commission or appointment, merely upon proof of his having acted in the execution of the duties of the particular office.—As a magistrate, (*Berryman v. Wise*, 4 T. R. 366.) a surrogate (*R. v. Verelst*, 3 Camp. 432.) incumbent of a living, (*Berryman v. Wise*, ante,) an attorney, (*Id.*) a constable, (*Id.* and 1 East, P. C. 312, 315.) a commissioner for swearing affidavits, (*R. v. Howard*, Mo. & Rob. 187.) a letter carrier, (*R. v. J. Borrett*, 6 C. & P. 124.) &c. &c.

And so as to the acts of public officers, every person acting in a public capacity will be presumed to have done his duty, until the contrary appear. See *R. v. William Phelp*, R. & M. C. C. 263.

Orders of Magistrates.

Page 962.

Magistrates may amend a conviction, but not an order, previously to its being returned to the sessions. An appellant has a right of appeal against an order in its original form, and not as it may have been amended. *R. v. Chester*, Js. 5 B. & Ad. 439. Amendment.

Page 963. § 4.—A mere recital in an order of magistrates, that it appeared to the justices that the rules of a certain friendly society had been enrolled at the quarter sessions, is not evidence of the enrolment of the rules. *R. v. Gilkes*, 8 B. & C. 439. Effect of recital in.

Overseers.

Page 976. § 12.

Two overseers of a parish divided the duty between them, each taking half a year, and making up a separate account. One ap- Appeal against accounts.

Parish.

pealed to the quarter sessions against the other's accounts; and the justices, after hearing one witness only for the respondents, decided (on objections taken) that the appeal did not lie, as the appellant was a co-overseer, and as he had made no opposition to the passing of the accounts, either at the special sessions, or in vestry. It was held, that these were no grounds for rejecting the appeal; and as the proceeding of the quarter sessions was no hearing of the case, they not having exercised their jurisdiction, a *mandamus* was directed to issue, calling upon them to hear the appeal. *R. v. Js. of Gloucestershire*, 1 B. & Ad. 1.

Oper and Terminer.

See *Assizes*, ante, p. 1497.

Pardon.

Page 983.

11 G. 4. &
1 W. 4. c. 39.
Regulations as
to conditional
pardons.

By 11 G. 4. & 1 W. 4. c. 39. s. 7. Where any person shall be convicted of any crime punishable by death; if his majesty shall be pleased to extend mercy to the offender,—upon condition of imprisonment with, or without, hard labour,—and such intention of mercy shall be signified by the secretary of state to the court, before which the offender was convicted, or any subsequent court with the like authority; such court shall allow to the offender the benefit of a conditional pardon, and make an order for his imprisonment with, or without, hard labour, as the case may be. And in case such intention of mercy shall be signified to the judge before whom the offender was convicted, or to any judge of the courts at Westminster, the judge shall allow to the offender the benefit of a conditional pardon, and make an order for his imprisonment, in the same manner as if such intention of mercy had been signified to the court during the term, or session, in or at which the offender was convicted: and such allowance and order shall be considered as made by the court before which the offender was convicted, and shall be entered on the records of such court by the proper officer, and shall be as effectual to all intents and purposes, and have the same consequences, as if such allowance and order had been made by the same court during the continuance thereof; and shall subject the offender to be so imprisoned.

See *Transportation*, post.

Parish.

Page 987.

Where two parishes are separated by a river, and there is no positive evidence of the boundary line between them, it is to be presumed

Perjury, III.

1705

to coincide with the middle line of the channel. *R. v. Landulph, Mo. & Rob. 393. Patteson, J.*

Parliament.

Page 987.

By *sect. 58* of the 2 & 3 *W. 4. c. 45. (the Reform Act,)* certain questions may be put to a voter at the time of election, and it is enacted, that if any person shall wilfully make a false answer to any of such questions, he shall be guilty of a misdemeanor and punished accordingly.

And, by the same section, the returning officer, or his deputy, may administer an oath or affirmation in the form therein prescribed, but swearing or affirming falsely is not made perjury.

Penalty.

See *Fine, ante*, p. 1606.

Perjury.

Page 998.

See *Affidavit*.

The legal offence of perjury can only be committed in certain cases of oaths taken under the common law, or in oaths taken under particular statutes, in which the offence is provided for. *R. v. Mudie, Mo. & Rob. 128. Lord Tenterden, C. J.*

There are many cases in which perjury would not be committed, unless some act of parliament declared that the false swearing should be perjury. *R. v. Moody, 6 C. & P. 23. Lord Tenterden, C. J.*

III. Of Perjury, by various Statutes.

It by no means necessarily follows that perjury must be committed in a false oath taken under a particular statute. Though a high misdemeanor, it would not be perjury, unless so made by the statute requiring the oath, and there are many cases of statutes requiring oaths, and not creating the offence. *R. v. Mudie, Mo. & Rob. 128. Lord Tenterden, C. J.*

By *sect. 45* of the 2 & 3 *W. 4. c. 53. (for consolidating and amending the Laws relating to the Payment of Army Prize Money)*, persons falsely making oath to any matters therein required to be verified on oath, shall suffer the penalties incurred by persons committing perjury. Army prize money.

And see *sect. 49* of the same act, *Forgery, III. ante*, p. 1618.

Perjury, IV. (*Indictment.*)

- And by 2 & 3 W. 4. c. 106. s. 4. Persons swearing falsely, as to parties entitled to receive half-pay, &c. are to be liable to the penalties of perjury.
- Charity commissioners. By the 5 & 6 W. 4. c. 71. (*for appointing Commissioners to inquire concerning Charities*), s. 10. Any person giving false evidence before the commissioners, shall be liable to the penalties of perjury.
- Corporations. By sect. 21. of the 5 & 6 W. 4. c. 76. (*for the Regulation of Municipal Corporations*), any person swearing or affirming falsely in any oath or affirmation required by that act, shall be guilty of perjury.
- Interrogatories in courts of law. By the 1 W. 4. c. 22. the courts of law are authorized to order the examination of witnesses upon interrogatories and otherwise; and by sect. 7. of the same act, persons swearing or affirming falsely are to be guilty of perjury.
- Poor law commissioners. By sect. 13. of the 4 & 5 W. 4. c. 76. (*for the Amendment of the Poor Laws*) if any person, upon any examination under the authority of that act, shall wilfully and corruptly give false evidence, he shall be guilty of perjury;—and if any person shall make or subscribe a false declaration, he shall suffer the pains and penalties of perjury.
- Revising barristers. By the 2 & 3 W. 4. c. 45. (*the Reform Act*) s. 52. the barristers appointed to revise the lists of voters are empowered to administer an oath or affirmation, and a person taking an oath or making an affirmation falsely, shall be guilty of perjury.
- And see *Parliament, ante*, p. 1705.
- Seamen's wills, &c. As to perjury committed respecting seamen's wills, &c. see 2 & 3 W. 4. c. 40. s. 32. *title Forgery*, III. *ante*, p. 1617.
- Slave trade. By the 3 & 4 W. 4. c. 73. s. 42. Persons swearing or affirming falsely before the commissioners or others, under an act for carrying into effect two conventions with the King of the French for suppressing the slave trade, shall be liable to the pains and penalties of perjury.

IV. *Of the Indictment and Trial.*

- Venue. Page 1013. § 6.—A witness committed perjury upon the trial of an indictment at the quarter sessions for the county of Worcester, which are held at the Guildhall in the county of the city of Worcester. And it was held that an indictment for this perjury might be preferred at the assizes held in and for the county of the city of Worcester. *R. v. Wm. J. Jones*, 6 C. & P. 137. *Tindal, C. J.*
- Of materiality to question in issue. Page 1016. § 23.—In the case of perjury the indictment must show, either by a statement of the proceedings, or by other averments, that the question to which the offence related was material. It is part of the definition of perjury that the false swearing is on some point material to the question in issue. In an indictment this may appear either from the matter of the suit as shown on the record, or by direct averment. *R. v. John Nicholl the younger*, 1 B. & Ad. 21.
- So where an indictment stated that on the trial of a certain issue it became a material question, whether on the occasion of an alleged arrest *J. L.* touched *J. K.*, and charged the defendant with falsely swearing that *J. L.* had put his arms round *J. K.* and embraced

him—*innuendo*, that *J. L.* had, *on the occasion to which the said evidence applied*, touched the person of *J. K.* It was held that the materiality of the evidence did not sufficiently appear. *Id.*

V. *Of the Evidence.*

Page 1020. § 1.—In a case of perjury, a letter written by the defendant contradicting his own statement on oath, is a sufficient confirmation of a witness proving the perjury, to make it unnecessary to have a second witness. *R. v. Mahew*, 6 C. & P. 315. *Lord Denman*, C. J. See *R. v. Mudie*, Mo. & Rob. 128.

One witness confirmed by defendant's declaration.

Page 1020. § 4.—On an indictment for perjury, alleged to have been committed on the trial of a cause, *Hulme & Co. v. Gibson and others*, *Gibson*, the defendant in the action, is not rendered incompetent as a witness for the prosecution, merely on the ground that the defendants in the action have not paid the debt and costs, but have filed a bill in equity. *R. v. Hulme*, 7 C. & P. 8. *Lord Denman*, C. J.

But in the same case it appeared that *Gibson*, the defendant in the action, expected that the prisoner would be called as a witness against him in another cause which was coming on between the same parties;—and the Lord Chief Justice said, that if he had to decide the question finally he would reject the evidence. But as there was an opportunity of revising the decision, he would receive it. *Id.*

Page 1021. § 6.—On an indictment for perjury, committed on the hearing of a parish appeal at the quarter sessions, the production of the sessions' book, is not sufficient proof that the appeal came on to be heard,—but a regular record must be made up on parchment, which may be proved by an examined copy in the usual way. *R. v. Ward*, 6 C. & P. 366. *Park, J.* See also *Porter v. Cooper*, 6 C. & P. 354. *Patteson, J.* And *R. v. Joseph Thring*, 5 C. & P. 507. *Gurney, B. S. P.*

Proof of former trial.

A sessions' book insufficient.

So where an indictment against *C. D.* averred that a cause was depending between *A. B.* and *C. D.*,—a notice of set off entitled in a cause *A. B.* against *C. D.*, and signed by the attorney of *C. D.* is not sufficient evidence to support the allegation. *R. v. William Stoveld*, 6 C. & P. 489. *Lord Denman*, C. J.

Notice of set-off insufficient.

Page 1021. § 7.—Upon an indictment for perjury, committed before a magistrate upon the hearing of an information for sporting without a certificate, parol evidence is not admissible to prove what the defendant stated when he was examined as a witness before the magistrate. *R. v. Wylde*, 6 C. & P. 380. *Park, J.* See *R. v. Edmunds*, 6 C. & P. 164. *ante*, p. 1597.

Parol evidence of examination.

And upon an indictment for perjury committed on the trial of a cause, it is sufficient evidence to go to the jury, if a witness states *from recollection* the evidence that the defendant gave on that occasion,—though he did not take it down in writing, and cannot say with certainty that it was *all* the evidence the defendant gave,—provided he can say with certainty, that it was all the defendant gave on the particular point alleged to be false, and that he said nothing to qualify it. *R. v. Rowley*, R. & M. C. C. 111.

Evidence.

Page 1021. § 8.—Where an indictment for perjury contains several assignments of perjury, upon one of which no evidence is given

Defence.

Players and Play-Houses.

on the part of the prosecution, the defendant cannot give evidence to disprove that assignment. *R. v. Hemp*, 5 C. & P. 468. *Denman*, C. J.

Character.

Upon the trial of an indictment for perjury, witnesses to character may be asked, "What is the character of the defendant for veracity and honour?" and "Do you consider the defendant a man likely to commit perjury?" *Id.*

Proof of authority to administer the oath.

Page 1022. § 10.—An affidavit sworn before a commissioner for taking affidavits is admissible without producing the commission by virtue of which the commissioner acted,—proof of the commissioner having acted as such is sufficient. *R. v. Howard*, Mo. & Rob. 187. *Patteson*, J.

Answer in Chancery.

Page 1023. § 13.—Upon an indictment for perjury committed in an answer in chancery, it appeared that the bill had been amended, but the perjury was assigned upon the answer to the bill as it originally stood. The original record was produced by a clerk from the six clerks' office, who stated that the amendments had been made by another clerk in the six clerks' office, whose hand-writing he knew. It was held that it was not necessary to call the clerk who made the amendments, and that the amendments were sufficiently proved. *R. v. Laycock*, 4 C. & P. 326. *Lord Tenterden*, C. J.

And the amendments in the bill were not material. *Per Lord Tenterden*, C. J. in *S. C.*

In order to convict a person upon an indictment for taking a false oath of a qualification to sit as a member of parliament for a borough, the jury must be satisfied beyond all doubt that the property was not worth 300*l.* a year, and also that the defendant well knew that it was not of that value. *R. v. Sir J. E. De Beauvoir*, 7 C. & P. 17. *Lord Denman*, C. J.

Pilots.

Page 1026.

Penalty for not employing.

The master of a ship is not liable to the penalty imposed by the 6 G. 4. c. 125. s. 58., for refusing to employ a pilot; unless the pilot produces his licence, as required by section 66.; notwithstanding the license may not be demanded. *Hammond v. Blake*, 10 B. & C. 424.

Players and Play-Houses.

Page 1034.

History.

If we go back to a very ancient period in the history of the country, we shall find no traces of players existing: as we advance farther in point of time, we ascertain from acts of parliament and other documents that exhibitions of the stage did then take place under the protection, in some instances, of the King or nobles, sometimes in religious houses, and sometimes in towns and other places,

with the sanction of the governing local authorities. In the time of *Elizabeth* players were declared by statute to be rogues and vagabonds, unless acting as the servants of some baron or person of higher degree. The statute 12 *Ann. st. 2. c. 23.* classed all common players of interludes among rogues and vagabonds, and to explain this the act of 10 *G. 2. c. 28.* was passed. *Per Lord Tenterden, C. J. in R. v. J. G. Neville, 1 B. & Ad. 489.*

By 10 *G. 2. c. 28. s. 1.* Persons acting plays for hire, gain, or reward, without patent from the King, or license from the lord chamberlain, are made punishable as rogues and vagabonds, if not settled in the place where the offence is committed.

No person to act without patent or license.

And by *sect. 5.* It is provided that no person shall be authorized by letters patent from the crown, or license of the lord chamberlain, to act plays, &c. for hire, gain, or reward, in any part of *Great Britain*, except in the city of *Westminster* and the liberties thereof, and in such places as his Majesty may reside, and during such residence only. (See the other sections of the act, *ante*, p. 1034.)

Patent or license only to extend to *Westminster*, &c.

The construction of the 2d and 5th sections of the 10 *G. 2. c. 28.* taken together is, that no person shall perform plays, &c. at all without a licence, nor with it, unless within the limits prescribed. *R. v. J. G. Neville, 1 B. & Ad. 489.*

Construction of the act.

The prohibition in *sect. 2.* of that act is not merely co-extensive with the power limited by *sect. 5.* but extends to the whole kingdom: and the 28 *G. 3. c. 30.* was passed to relax that prohibition. *Id.*

Where a defendant was convicted by two magistrates for acting plays at *Manchester*, without a patent from the King, or license from the lord chamberlain, the conviction having been removed by *certiorari*, it was held good, and that it was for the defendant to show, if such were the fact, that he had a license from the sessions. *Id.*

Pleading.

Page 1036.

See Indictment, III. *ante*.

Upon an indictment for felony, removed by *certiorari* into the court of King's Bench, the court will, under special circumstances, allow a defendant to plead by clerk in court, and in such case will restrain the prosecutor and defendant from assigning error on that ground. *R. v. Penprase and others, 4 B. & Ad. 573. R. v. Blackburn and others, 4 B. & Ad. 575.*

Pleading by clerk in court.

Where an indictment for a misdemeanor has been removed by *certiorari* into the court of King's Bench, and comes on for trial at *Nisi Prius*, the defendant cannot withdraw his plea of not guilty at *Nisi Prius*, and plead guilty, but the jury may find him guilty upon his own confession. *R. v. Steel, York Summer Assizes, 1834. Lord Lyndhurst, C. B. MS.*

Defendant can not withdraw his plea at *nisi prius*.

A prisoner was convicted of murder, and under sentence of death. Upon being brought before the court of King's Bench, under a writ

Pleading a promise of pardon.

Poor.

of *habeas corpus*, and being asked what he had to say why execution should not be awarded against him, pleaded, *ore tenus*, that by proclamation in the *gazette*, his majesty had promised his pardon to any person, except the person who actually fired the shot, who should discover his accomplice or accomplices in the murder, so that he, she, or they might be apprehended and convicted thereof; that the prisoner being one of the persons concerned in the felony, but not the person who actually fired the shot, did, on, &c. discover his accomplices therein; and that in consequence J. M. was apprehended and convicted thereof, &c. The attorney-general having demurred, *ore tenus*,—it was held that the plea was bad, and execution was awarded. *R. v. Garside and Mosley*, 2 A. & E. 266.

Poisoning.

See *Murder*, II. *ante*, p. 1688.

Police of the Metropolis.

The several acts for regulating the police of the metropolis and the River Thames, are consolidated and amended by 3 & 4 W. 4. c. 19. which is to continue in force until the 5th July, 1836, and until the end of the then next session of parliament.

By the same act the 3 G. 4. c. 55., 6 G. 4. c. 21., and 10 G. 4. c. 45. are repealed, except as to offences previously committed.

By *sect. 5*. Constables are to be employed at the metropolitan police offices, by direction of the secretary of state, with power to act in the counties of *Middlesex*, *Surrey*, *Essex*, and *Kent*, and the liberty of the *Tower*.

By *sect. 7*. The officers and horse patrol of the *Bow Street* police office, shall have the power of constables within the same limits, and within the royal palaces, and ten miles thereof.

By *sect. 9*. The police magistrates, upon any representation made to them showing the necessity thereof, may appoint constables, for such period of time as they shall deem fit and necessary, to keep the peace at any place within the bills of mortality, or the parishes of *Saint Mary-le-bone*, *Paddington*, *Saint Pancras*, *Kensington*, or *Saint Luke*, *Chelsea*.

By *sect. 10*. Power is given to two justices to impose fines not exceeding 10*l.* upon a constable for any neglect of duty, or misconduct.

Poor.

Page 1041.

The laws relating to the poor have been modified and improved in many very important respects, by the 4 & 5 W. 4. c. 76.; but the law on that subject does not come within the scope of this work.

Post Office.

Page 1042.

The 5 & 6 W. 4. c. 81. repeals so much of the 52 G. 3. c. 143. as inflicts the punishment of death for letter-stealing, and other offences relating to the post-office,—and enacts that every person convicted of such offences, “or of aiding, abetting, counselling, or procuring the commission thereof,” shall be liable to be transported for life, or for not less than seven years, or to be imprisoned with, or without hard labour, for any term not exceeding four years.

I. Of Offences by Persons employed in the Post-Office.—p. 1042.

A person who is employed at a receiving-house of the general post-office, to clean boots, &c. and assist in tying up the letter bags, is not a servant of the post-office, within the meaning of 52 G. 3. c. 143. s. 2. *R. v. William Pearson*, 4 C. & P. 572. *Littledale, J. and Bosanquet, J.*

Who a servant of the Post Office.

Where S., was a person employed by a post mistress to carry letters from *Dursley* to *Berkeley*, at a weekly salary paid him by the post mistress, but which was repaid to her by the post-office,—it was held that he was a person employed by the post-office, within the meaning of the 52 G. 3. c. 143. s. 2. *R. v. Salisbury*, 5 C. & P. 155. *Patteson, J.*

Who is a person employed.

Where a letter, sent from *Cardiff* and directed to *Dudley*, was mis-sent to *Dursley*, and was stolen by S., it was held that the letter did not come to his hands “in consequence of his employment.” *Id.*

It is sufficient to prove that a person acts in the employment of the post-office, without proving his appointment. *R. v. Borrett*, 6 C. & P. 124. *Littledale, J., Bolland, B., and Bosanquet, J. R. v. Rees and another*, 6 C. & P. 606. *Parke, B.*

Proof of employment.

Upon an indictment, under the 52 G. 3. c. 143. s. 2., for feloniously secreting a letter, containing a bill of exchange, the jury found the prisoner guilty, but added that they thought the secreting the letter was only for the purpose of appropriating the postage. The case, having been reserved for the consideration of the judges, they were of opinion that, as the statute extends to such letters only as contain valuable documents, the security of the documents was the object contemplated by the legislature; and as the prisoner had no intention to put those documents in hazard, or to prevent the person for whom they were intended from receiving the same, the case, though within the letter, was not within the spirit of the act, and that the conviction was therefore wrong. *R. v. Samuel Sharpe*, R. & M. C. C. 125.

Secreting a letter.

II. Of Offences by Persons not employed in the Post-office.

Page 1046.

A receiving-house is not a post-office within the meaning of 52 G. 3. c. 143. but it is “a place for the receipt of letters.” And a whole

Receiving house not a post-office.

Presentment,

shop is to be considered as “a place for the receipt of letters,” and not merely the letter-box. Therefore, if a person take a letter and put it on the shop counter of the receiving-house, or give it to one of the persons belonging to the shop, there, that is putting the letter into the post. *R. v. William Pearson*, 4 C. & P. 572. *Littledale, J. and Bosanquet, J.*

An indictment under this statute alleged that a letter was “to be delivered at *Turvey*,” the letter was addressed “*Turvey House*.” This was, however, held to be sufficient. *Id.*

What a sufficient taking.

To constitute the offence of stealing a letter from a place for the receipt of letters, under *sect. 3.* of that act, it is essential that the letter should be carried out of the shop, which was the place for the receipt of letters; and, therefore, if a person take a letter and steal its contents, without taking the letter out of the shop, that is not an offence within the meaning of this section of the statute. *Id.*

Stealing letters, mail bags, &c.

By 2 & 3 W. 4. c. 15. s. 11. Every person who shall steal or unlawfully take away any bag, or mail of letters sent, or to be sent by any British ship or vessel, employed for the conveyance of mails of letters and packets, or shall steal or unlawfully take any letter or packet out of any such bag or mail, or shall unlawfully open any such bag or mail, shall, upon being convicted thereof, be adjudged guilty of felony, and shall be liable to be transported, not exceeding fourteen years, nor less than seven years, or to be imprisoned not exceeding three years;—and when any such felony shall be committed within the jurisdiction of the admiralty of *England*, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

Felony.
Punishment.

Jurisdiction of Admiralty.

What is a sufficient refusal.

A letter-carrier was indicted for embezzling the overcharge of a letter under 2 & 3 W. 4. c. 4. s. 1. (stated *ante*, p. 1583.) The letter was charged *treble*, but was in fact only *double*; it was directed to *Mr. Collins*, but *Mrs. Collins* had taken it in and paid the postage, and *she alone* had made any demand upon the prisoner for repayment of the overcharge. And it was held that *Mrs. Collins* (having paid the postage) was authorized to receive the *rebate*, and the prisoner having refused to account for it to her, was guilty of an embezzlement within the meaning of that statute. *R. v. Jeremiah Borret*, 6 C. & P. 124. *Littledale, J. Bolland, B. and Bosanquet, J.*

And see *Embezzlement*, *ante*, p. 1583.—and *Forgery*, III. *ante*, p. 1616.

Presentment.

Page 1053.

The 5 & 6 W. 4. c. 50. s. 99. abolishes the proceeding by presentment against the inhabitants of any parish, or other person on account of any highway or turnpike road being out of repair.

Prison and Prisoner.

Page 1055.

See *tit. Gaol and Gaoler, ante*, p. 1626.

"If a person be taken on a charge of horse-stealing, and the horse alleged to have been stolen be in his possession, any money found upon him ought not to be taken away from him." *Per Patteson, J.* in *R. v. William Jones*, 6 C. & P. 343.

Money found upon a prisoner.

And in another case the same learned judge said, "the prisoner complains that his money was taken from him, and that he was thereby deprived of the means of making his defence. Generally speaking, it is not right that a man's money should be taken away from him unless it is connected in some way with the property stolen. If it is connected with the robbery, it is quite proper that it should be taken. But unless it is, it is not a fair thing to take away his money which he might use for his defence. I believe constables are too much in the habit of taking away every thing they find upon a prisoner, which is certainly not right." *R. v. Daniel O'Donnell*, 7 C. & P. 138.

Prize-Fighting.

Page 1059.

All persons who are present at a prize-fight are equally guilty as principals assisting in a breach of the peace, and it is not at all material which party struck the first blow. Persons who go to a prize-fight to see the combatants strike each other, and are present when they do so, are all in point of law guilty of an assault. And there is no distinction between those who concur in the act, and those who fight. *R. v. Perkins and others*, 4 C. & P. 537. *Patteson, J.*

Persons present at a prize-fight.

See *Evidence*, I. (1), *ante*, p. 1585, and *Manslaughter*, IV. *ante*, page 1683.

Prohibition.

Page 1063.

See the 1 W. 4. c. 21. for improving the proceedings in prohibition.

Public-Houses.

See *Beer*, *ante*, p. 1502. and *Int*, *ante*, p. 1655.

Punishment.

See **Capital Punishment**, *ante*, p. 1512.

Quakers.

Page 1073.

The form of an affirmation by a Quaker or Moravian, given by 9 *G. 4. c. 32. s. 1.* is, "I A. B. do solemnly, sincerely, and truly declare and affirm." The 9 *G. 4. c. 32.* did not enable Quakers to act as *jurymen* upon their affirmation. *R. v. Channens, R. & M. C. C. 374.*

But see now the 3 & 4 *W. 4. c. 49. title Oath*, *ante*, p. 1699.

Rape.

II. *Of the Evidence.*—Page 1083.

Where several rapes.

Where an indictment against a prisoner charges him in several counts as a principal in the first degree, and also as an aider and abettor of other men,—evidence may be given of several rapes upon the same woman at the same time by the prisoner and other men, each assisting the other in turn, without putting the prosecutrix to elect on which count to proceed. *R. v. Folkes and Ludd, R. & M. C. C. 354.*

Proof of penetration sufficient.

Upon an indictment for this offence under 9 *G. 4. c. 31. s. 18.* it is sufficient to prove *penetration*, and the offence is complete although the jury *negative emission*. *R. v. John Cox, R. & M. C. C. 337.*

So in a previous case before *Hullock, B.* that learned judge held that *penetration* was sufficient without *emission*, although the prisoner did not withdraw merely because his lust was satisfied, and that he would be equally guilty as if there had been an emission and he had been satisfied. *R. v. Jennings, 4 C. & P. 248.*

These decisions have now established that *emissio seminis*, is not a necessary ingredient of this crime, overruling the case of *R. v. Russell*, in which it had been held by *Taunton, J.* that the jury must be satisfied that emission occurred before they could convict, although it was not necessary specifically to prove it. This decision however, it was impossible to support without rendering the enactment in section 18. of the statute entirely inoperative.

What a sufficient penetration.

As to what is a sufficient penetration, it has been decided that if the hymen is not ruptured, the penetration is not sufficient. *R. v. James Gammon, 5 C. & P. 321. Gurney, B.*

And in a case for carnally abusing *Elizabeth Bender*, a female child under the age of ten years, the child stated that there was a penetration by the prisoner, and also that she felt something wet.

That the prisoner being disturbed, left her, and afterwards returned and again made a penetration, and she again "felt wet." But a surgeon (called on the part of the prisoner) stated that it was impossible penetration could have taken place as there had been no laceration, and the child's parts were so small that he could not introduce his little finger, and he also added that the prisoner could not possibly have penetrated without producing laceration. And the learned judge was of opinion that there had been no sufficient penetration, and directed an acquittal. *R. v. James Taunton, York Spring Assizes, 1834. Alderson, J. MS.*

Upon the trial of an indictment for a rape, the prosecutrix may be asked, whether, previously to the commission of the alleged offence, the prisoner has not had intercourse with her by her own consent. *R. v. Moses Martin and another, 6 C. & P. 562. Williams, J.*

Previous intercourse.

In an indictment for carnally knowing and abusing a child under the age of ten years, it was stated that the offence was committed on the 5th February 1832. In order to prove that the child was under ten years of age, the father was called, who stated, that he went from home for a few days in February 1822, before his wife's confinement, and returned on the 9th of the same month that this child had been born, and, as it was stated to him by the child's grandmother, the day previous to his return. The child appeared by the register to have been baptized on the 9th February 1822. The mother was dead, but the grandmother was living. *Taunton, J.* having conferred with *Littledale, J.* said, "My learned brother concurs with me in thinking that this evidence is not sufficient. The whole amount of the evidence to prove the time of the child's birth is the declaration of the grandmother to the father. The father was from home at the time of the birth, and the mother is dead, but still the grandmother might have been called. As this is a matter of so much importance in a case of this kind, we think that the best evidence ought to be adduced." And the prisoner was acquitted. *R. v. James Wedge, 5 C. & P. 298.*

Abusing a child under 10 years.

III. Of the Indictment.

Page 1085. § 4.—A general conviction of a prisoner upon an indictment for rape,—charging him in several counts as principal in the first degree, and as an aider and abettor of other men, is valid on the count charging him as principal. *R. v. Folkes and Ludds, R. & M. C. C. 354.*

Principal, aiders, and abettors.

And in a similar case, where an indictment in the first count charged *A.* as principal in the first degree, and *B.* as principal in the second degree;—and in the second count charged *B.* as principal in the first degree, and *A.* as principal in the second;—a motion having been made on behalf of the prisoners to quash the indictment; *Cole-ridge, J.* refused to do so. *R. v. Gray and Wise, 7 C. & P.*

An indictment for an assault with intent to commit a rape upon a girl between the ages of ten and twelve years, is bad if it do not state that the girl is between the age of ten and twelve years. *R. v. Butler, 6 C. & P. 368. Patteson, J.*

Girl between 10 & 12 years

Receivers of Stolen Goods.

Page 1087.

And see *Accessories*.

I. Of Receivers generally.

Construction of
3 G. 4. c. 24.
s. 3.

Before the passing of 7 & 8 G. 4. c. 29. a prisoner was tried and convicted upon an indictment founded on the 3 G. 4. c. 24. s. 3. charging him with *feloniously* receiving three live turkeys, stolen by a person unknown. Upon the trial it was insisted for the prisoner that he could not be indicted for a felony under this statute; that before the statute passed, the act of receiving stolen goods was not a felony but a misdemeanor only where the principal was not convicted. That the statute only says such an act shall be *deemed* and *construed to be a felony*, instead of declaring it to be a felony in distinct and positive terms. The question having been submitted to the judges for their opinion, it was determined by a majority consisting of *Abbot, C. J., Best, C. J., Bayley, J., Burrough, J. and Garrow, B.* that the 3 G. 4. c. 24. s. 3. left as misdemeanors what were misdemeanors before the passing of that act, and therefore this offence was not punishable as felony; and that the conviction was wrong. *Hullock, B. Littledale, J. Holroyd, J. and Graham, B.* were of a contrary opinion, and that since the passing of that statute this offence was felony and punishable as such. *R. v. William Cale, R. & M. C. C. 11.*

This point again arose in the case of *R. v. Isaac Solomons*, and the judges determined by a majority of nine to six, that a receiver was guilty of felony, under the 3 G. 4. c. 24. s. 3. although the principal was not convicted, and that the case of *R. v. William Cale*, was wrong. *R. v. Isaac Solomons, R. & M. C. C. 292.*

II. Of the Indictment and Evidence.

Indictment.

Page 1090. § 1.—Where the thing received is not the same in substance, as that which was stolen, then the receiver cannot be charged in the indictment with receiving the identical thing stolen. Thus, where *A.* and *B.* were indicted, *A.* for stealing six bank-notes of 100*l.* each, and *B.* for receiving "*the said notes*," knowing them to have been stolen; and it appeared, that *A.*, after receiving the notes, got them changed into 20*l.* notes, and that it was some of these *latter notes*, which *B.* had actually received; *B.* was, of course, held entitled to an acquittal on this indictment. *R. v. Walkley, 4 C. & P. 132.*

Averment that
goods were
stolen.

An indictment for receiving stolen goods is not bad because it neither states the name of the principal, nor that his name is unknown. It is sufficient to aver that the goods were stolen "by a certain evil disposed person." *R. v. Jervis, 6 C. & P. 156. Tindal, C. J.*

The offence created by the act of parliament (7 & 8 G. 4. c. 29.) is not the receiving stolen goods from any particular person, but re-

ceiving them knowing them to have been stolen. The question therefore will be whether the goods were stolen,—and whether the prisoner received them knowing them to have been stolen. *Id.*

And *semble* that it is sufficient if an indictment for receiving stolen goods states, that the goods *have been stolen*. *Id.*

If an indictment against a receiver state the larceny to have been committed by a person unknown, and it appears in evidence that he is known, the prosecution must fail. *R. v. John Blick*, 4 C. & P. 377. *Bosanquet, J.* Variance.

And if the indictment state the name of the principal, a stealing by that person must be proved, otherwise the prisoner must be acquitted. *R. v. Woolford and Lewis*, 1 Mo. & Rob. 384. *Patterson, J.*

Upon an indictment against *B.* and *G.* for larceny as *principals*, it appeared that *B.* was in the service of the prosecutor, and was sent to deliver some fat, but he did not deliver *the whole*, having given a *part* to *G.* It having been objected that *G.* ought to have been charged as a *receiver* and not as principal, it was held that it was for the jury to say whether *G.* was present at the time of the separation, (in which case he would be a principal) or received the fat afterwards. *R. v. Butteris and Grove*, 6 C. & P. 147. *Gurney, B.* Evidence.

Where prisoners are charged in several indictments with receiving stolen goods at several times, any receiving that was before the one in the indictment which is being tried is strictly speaking evidence, although the subject of another prosecution, but “as a matter of candour,” the prosecutor ought to waive the other indictment, if he gives the previous receiving in evidence upon the trial for the subsequent offence. *R. v. Davis and another*, 6 C. & P. 177. *Gurney, B.* Proof of prior receiving to show the guilty knowledge.

If a receiver takes without any profit or advantage,—or whether it be for the purpose of profit or not,—or merely to assist the thief; it is precisely the same. *Id.* Intent.

If a person receives stolen property for the mere purpose of concealment, without deriving any profit at all,—he is just as much a receiver as if he had purchased it. And it is a receiving within the meaning of the statute. *R. v. Richardson and others*, 6 C. & P. 335. *Taunton, J. Gaselee, J. and Vaughan, B.*

Upon an indictment against four prisoners for receiving goods, knowing them to have been stolen, it appeared that after the goods were taken away, they were found concealed in an old house, which being watched, the prisoners were seen taking them away. It was held that to warrant a conviction of the prisoners as *receivers*, the jury must be satisfied that the goods had been stolen by some other person to the knowledge of the prisoners. There ought to be *some* evidence to show that the stealing was by another person, otherwise the evidence would warrant a conviction *for stealing*. *R. v. Densley, Stone and others*, 6 C. & P. 399. *Patterson, J.* It must be shown that the larceny was committed by another to the knowledge of the receiver.

In a case of indictment against several persons as receivers, the jury must be satisfied that they acted with a common design. *Id.*

If a prisoner be tried upon an indictment charging him with receiving goods stolen by a *person named*, and is acquitted for want of proof that the stolen goods were stolen *by the person named*, the

receiver may be tried upon another indictment for *the same receiving*, charging the larceny to have been committed by *a person unknown*. *R. v. Woolford and Lewis, Mo. & Rob. 384. Patteson, J.*
See *Autrefois Acquit*.

Recognizance.

Page 1093.

See *Fine, ante*, p. 1606.

Jurisdiction of Exchequer.

The statutes 3 *G. 4. c. 46.* and 4 *G. 4. c. 37.* do not oust the court of exchequer of its jurisdiction, when forfeited recognizances have been actually estreated into it. *Ex parte Jonathan Pellow, M' Clelland, 111.*

The court of exchequer has no jurisdiction over recognizances forfeited at quarter sessions, but not estreated, although the yearly certificate of them have been delivered into the court under 3 *G. 4. c. 46. s. 14.* In such case the court of quarter sessions alone has jurisdiction, and by section 6. of that act, the court may at a session subsequent to that at which the recognizances are forfeited, inquire into the circumstances of the case, and at its discretion order the discharge of the whole of the forfeited recognizances. *R. v. Thompson, 3 Tyr. 53.*

Discharging recognizances.

The court (*O. B. S.*) will not allow the recognizances to be discharged or withdrawn in a case of embezzlement, without a bill of indictment being preferred, merely on the ground that the prosecutors (a public society) thought the reformation of the offender would be best promoted by such course,—there being no difficulty in making out a case against the prisoner. *R. v. James Paul, 6 C. & P. 323. Park, J. Patteson, J. and Gurney, B.*

But in the case of a prosecution against a pauper at the *Maidstone assizes* for obtaining money (6s.) under false pretences, the parish having expressed a wish not to prefer an indictment, *Vaughan, B.* permitted the recognizances of the parish officers to be withdrawn. *R. v. Adams, 6 C. & P. 324. n. (a).*

Record.

Page 1096.

Nisi prius record and *postea*.

A defendant having been convicted in the court of King's Bench upon an indictment (on the prosecution of a private individual) for keeping a common gaming house; in Easter Term 1823, a rule *nisi* was obtained by the attorney general calling upon the defendant to show cause why the solicitor of the treasury should not be at liberty to cause a new record of *nisi prius* to be ingrossed, and the *postea* and verdict to be indorsed from the judge's notes, on an affidavit that the *postea* could not be found, and that the solicitor of

the treasury was instructed by the secretary of state to call for the judgment of the court. And in *H. T. 1824*, the rule having been made absolute, the defendant was sentenced by the court. *R. v. Oldfield*, 3 B. & Ad. 659. *R. v. Fielder*, 3 B. & Ad. 659. *S. P.*

Recorder.

See *Justices*, ante, p. 1658. and *Sessions*, post.

Rewards.

Page 1111.

See *Arrest*, ante, p. 52.

Rewards under the 7 G. 4. c. 64. s. 28. are not confined to persons who have either been put to expense or loss of time. *R. v. Barnes*, 7 C. & P. *Coleridge, J.*

Where the facts upon which the reward is applied for do not appear in evidence upon the trial, the judge will require them to be laid before him upon affidavit. *R. v. Thomas Jones*, 7 C. & P. *Park, J.*

Riot.

Page 1113.

“ It has been well said that the use of the law consists, first, in preserving men's persons from death and violence,—next, in securing to them the free enjoyment of their property: and although every single act of violence, and each individual breach of the law, tends to counteract and destroy this its primary use and object, yet do general risings and tumultuous meetings of the people in a more especial and particular manner produce this effect, not only removing all security both from the persons and property of men, but for the time putting down the law itself and daring to usurp its place. The law of *England* hath accordingly, in proportion to the danger which it attaches to rioters and disorderly meetings of the people, made ample provision for preventing such offences, and for the prompt and effectual suppression of them whenever they arise.” *Per Tindal, C. J.* in his charge to the grand jury upon the special commission at *Bristol*. *January, 1832.*

Provisions of the law for preventing riots.

I. Of Riots and Unlawful Assemblies.

The difference between a riot and an unlawful assembly is this:—
If parties assemble in a tumultuous manner and actually execute

Difference between a riot

and an unlawful assembly.

their purpose with violence, it is a riot; but if they merely meet upon a purpose, which, if executed, would make them rioters, and having done nothing they separate without carrying their purpose into effect, it is an unlawful assembly. *R. v. Birt and others*, 5 C. & P. 154. *Patteson, J.*

If no proclamation the common law offence remains.

A riot is not the less a riot, nor an unlawful assembly the less an unlawful assembly, because the proclamation of the riot act has not been read, the effect of that proclamation being merely to make the parties guilty of a capital offence if they do not disperse within an hour, but if that proclamation be not read, the common law offence still remains, and it is a misdemeanor, and all magistrates, constables, and even private individuals, are justified in dispersing the offenders. *R. v. Fursey*, 6 C. & P. 81. *Gaselee, J. and Parke, J.*

If an illegal meeting be held for the purpose of adopting preparatory measures for the holding of a national convention, then the police have a right to interfere and arrest the parties. *Id.*

Riotously demolishing buildings.

Page 1115. § 16.—Upon an indictment on the 7 & 8 G. 4. c. 30. s. 8. for feloniously beginning to demolish a house, it was held that the persons committing the outrage must have had the intention of destroying the house, before they could be charged with a felonious beginning to demolish. And where it is clear that they had no such intention, but merely the intention of getting possession of a person in the house, the offence is not within the meaning of the act of parliament. *R. v. Price and others*, 6 C. & P. 510. *Tindal, C. J.*

What is a beginning to demolish.

It is not a *beginning to demolish* a house, within the meaning of the 7 & 8 G. 4. c. 30. s. 8., unless the jury are satisfied, that the main and ultimate object of the rioters was really to *demolish* the house. Therefore, though a body of rioters came and broke all the windows of a house, and one of the window-frames, forced out an iron bar, burst open the house door, and broke some of the furniture,—and then went away, without any thing to hinder them from doing more damage if they had chosen;—it was held by *Little-dale, J.*, that this was evidence of the rioters having completed their real purpose, and having done all the injury they meant to do. *R. v. Thomas*, 4 C. & P. 237.

Riot act. Reading the proclamation.

Page 1115. § 17.—If, in reading the proclamation from the riot act, the magistrate omit to read the words, “God save the King,” at the end of it, persons remaining together for an hour after such reading of the proclamation, cannot be capitally convicted under sect. 1. of that statute. *R. v. Child and others*, 4 C. & P. 442. *Vaughan, B. and Alderson, J.*

Where the proclamation from the riot act is read several times, the hour must be computed from the time of the first reading. *R. v. Woolcock and another*, 5 C. & P. 516. *Patteson, J.*

If there be such an assembly, that there would have been a riot if the parties had carried their purpose into effect, it would be within the act; and whether there was a cessation or not is a question for the jury. *Id.*

II. *How a Riot may be suppressed.*—Page 1117.

Duty of magistrates and

A party intrusted with the duty of putting down a riot, whether by virtue of an office of his own seeking (as in the ordinary case of a

magistrate) or imposed upon him (as in that of a constable) who is guilty of a criminal neglect in the discharge of that duty is liable to an indictment or information. A party so intrusted is bound to hit the exact line between excess and failure of duty, and the difficulty of doing so, although it may be some ground for a lenient consideration of his conduct on the part of the jury, is no legal defence to a charge of that nature. Nor can a party so charged with criminal neglect excuse himself on the mere ground of honest intention: he may omit acting to the extent of his duty from a perfectly good feeling, and that may be considered in apportioning the punishment: but the question for a jury would be whether or not he had done what his duty in point of law required. And although it would be a circumstance in a defendant's favour that he acted on the best military and best legal advice that could be obtained, yet such advice will not shelter him if he were wrong in point of law. *R. v. Charles Pinney, Esq. Mayor of Bristol*, 3 B. & Ad. 947. 5 C. & P. 254. S. C.

others in putting down riots.

Liable to indictment for neglect.

It is no part of the duty of a magistrate to head, to organize, or to array the special constables in the suppression of a riot, that being the duty of the chief constables. *Id.*

Magistrates are not criminally answerable for not having called out special constables and compelled them to act pursuant to 1 & 2 W. 4. c. 41. unless an information was laid before them on oath, of a riot, &c. having occurred or being expected. *Id.*

It is no part of the duty of a justice of the peace to accompany the military in the suppression of a riot; it is sufficient if he give them authority to act. *Id.*

A magistrate is not chargeable with neglect of duty for not having called out the *posse comitatus* in case of a riot, if he has given the King's subjects reasonable and timely warning to come to his assistance. *Id.*

And in a riot at *Bristol*, the mayor having applied personally to some of the inhabitants of the city, called at the houses of others, employed persons to do the same, sent notices to the churchwardens, &c., (it being a Sunday,) to be published at the places of worship, requiring the people to meet the magistrates at a stated time and place in aid of the civil power and for the protection of the city; and posted and distributed other notices to the like effect; *semble* that this was a reasonable warning, the riot having recently broken out. *Id.*

On the trial of an information against a magistrate for a criminal neglect of duty, it is necessary that the jury should all be agreed that he failed in his duty in some one particular point, and it is not sufficient that *part* of the jury think him wrong in *one instance* and *part* in *another*. *Id.*

The general duty of justices of the peace, with regard to rioters, is to restrain, and, if necessary, to pursue, arrest, and take them; that is the obligation arising from the nature of the office; and that they may be able to fulfil this, the justices are, in such cases, to call upon the king's subjects to aid them; they have authority to do so, and the king's subjects are bound to be assistant to them in suppressing the riot when reasonably warned, and all persons are bound to attend upon the notice of the magistrate, as well as upon the *posse comitatus*. *Id.*

General duty.

Riot, II. (*How Suppressed.*)

In the case of the *Bristol* riot, it having been proved that the magistrates had procured no adequate civil power to resist the mob or suppress the riot, and several public and private buildings were destroyed; it was held that there was a sufficient *prima facie* case made out against the mayor to call upon him for an answer, and to put it upon him to show that he did what the law required of him. *Id.*

Private persons.

By the common law every private person may lawfully endeavour, of his own authority and without any warrant or sanction of the magistrate, to suppress a riot by every means in his power. *Per Tindal, C. J., in his charge to the grand jury upon the special commission at Bristol, January, 1832.*

Authority and duty.

So he may disperse or assist in dispersing those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he authority,—but it is his bounden duty, as a good subject of the King, to perform this to the utmost of his ability. If the riot be general and dangerous he may arm himself against the evil-doers to keep the peace, and if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate in so doing, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object, will be supported and justified by the common law. *Id.*

No distinction between soldiers and others.

And with respect to this obligation imposed on every subject of the realm, the law acknowledges no distinction between the soldier and the private individual. The soldier is still a citizen lying under the same obligation and invested with the same authority to preserve the peace of the King as any other subject. *Id.*

Where the danger is pressing and immediate; where a felony has actually been committed or cannot otherwise be prevented; and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the King, like his civil subjects, not only may, but are bound to do their utmost of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. *Id.*

Authority, &c. of peace officers.

Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of a riot, and each has authority to command all other subjects of the King to assist them in that undertaking. *Id.*

And it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to the call of the magistrate, as they think proper; but every man is bound when called upon, under pain of fine and imprisonment, to yield a ready and implicit obedience to the call of the magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly. *Id.*

III. *Of the Indictment, &c.*—p. 1118.

If an indictment for a riot do not conclude *in terrorem populi*, the defendants cannot be convicted of a riot, but they may be convicted (upon the same indictment) of an unlawful assembly. *R. v. Cox and others*, 4 C. & P. 538. *Patteson, J.* Conclusion.

An indictment on the riot act, 1 G. st. 2. c. 5. s. 1., for remaining assembled one hour after reading the proclamation contained in the act, need not charge the original riot to have been *in terrorem populi*. *R. v. Warren James*, 5 C. & P. 153. *Patteson, J.*

Upon an indictment for a riot under the riot act, 1 G. 1. st. 2. c. 5., it appeared that the magistrate read the proclamation from a book which contained the words “of the reign of,” which were omitted in setting out the proclamation in the indictment; and it was held that the variance was fatal. *R. v. Woolcock and another*, 5 C. & P. 516. *Patteson, J.* Variance.

It does not appear from the report of the above case that the learned judge’s attention was called to the fact that the words “of the reign of,” are not contained in the form of proclamation given by the riot act, of which the following is a copy:—

“Our sovereign lord the King chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act, made in the first year of King *George*, for preventing tumults and riotous assemblies.

Form of proclamation.

“*God save the King.*”

Rivers and Navigation.

Page 1120.

Conveying noxious and deleterious ingredients into a river, whereby the water is corrupted and rendered unfit for use, to the common nuisance of his Majesty’s subjects is indictable as such. *R. v. Medley and others*, 6 C. & P. 292. *Lord Denman, C. J.* Nuisance.

But the circumstance of the fish in the river being diminished in quantity, and, consequently, several fishermen thrown out of employment, is not of itself sufficient to sustain an indictment for a nuisance for corrupting the water of a river. *Id.*

Robbery.

I. *Of the Felonious Taking.*

Page 1126. § 1.—If *any thing* be taken away from a person by violence, *however insignificant its value*, that is sufficient to constitute robbery. So in a case of robbery, where it was proved that the prisoners took from the prosecutor a piece of paper upon which was written a memorandum respecting some money that a person owed Value.

Taking in the presence of a party.

him, it was held sufficient to constitute robbery. *R. v. Bingley and Law*, 5 C. & P. 602. *Gurney, B.*

Page 1128. § 6.—In a case where A. and B. were walking along a road together, B. was carrying A.'s bundle, when the prisoners came up and assaulted A. B. laid down the bundle on the road and ran to A.'s assistance, when one of the prisoners took up the prosecutor's bundle and made off with it. This was held not to be robbery but larceny only. *R. v. Fallows and Saxton*, 5 C. & P. 508. *Vaughan, B.*

Semble, that in this case, if the prisoners did not assault A., with the intention of committing a robbery, but one of them seeing the bundle lying, the thought of taking it then struck him *for the first time* that would be larceny only. But if the assault were made *with the intention* of obtaining something in the possession of A. or B. at the time, it would be robbery.

A robbery cannot be committed unless the person robbed has the property in his peaceable possession to do with it what he pleases at the time the robbery is committed. *R. v. Edwards and others*, 6 C. & P. 421. *Bosanquet, J., and Patteson, J.*

II. Of the Violence, and putting in Fear.

Threatening a wife to accuse her husband.

Page 1123. § 10.—Obtaining money from a wife by threatening to charge her husband with an indecent assault, is not such a personal fear in the wife as is necessary to constitute the crime of robbery. *R. v. Edwards & Warren*, 5 C. & P. 518. *Littledale, J. S. C. nom. R. v. Edward, Mo. & Rob. 257.* And the learned judge said the case was new and perplexing. He thought it was a misdemeanor.

To make a case of this description robbery, the intimidation should be on the mind of the person threatened to be accused, and the apprehension of the wife was of a different character. The 7 & 8 G. 4. c. 29. s. 7. is in terms confined to threats made to the party himself. The principle is, that the person threatened is thrown off his guard, and has not firmness to resist the extortion; but the learned judge said that he could not apply the principle to the wife of the party threatened. Even as a misdemeanor the case was new, though he thought *that* the only way to treat the offence. He therefore directed an acquittal. *Id. Mo. & Rob. 257.*

V. Of Assaults with Intent to rob.

With intent to obtain an order for the payment of money.

Page 1146. § 2.—If a man with menaces demands a sum of money of another, and the person does not give it to him because he has it not with him, this is a felony within 7 & 8 G. 4. c. 29. s. 6. But if the man demanding the money *knows* that the money is not then in the possession of the person menaced, and only *intends to obtain an order for the payment of it*, it is not an offence within that section of the act of parliament. *R. v. Edwards and others*, 6 C. & P. 515. *Bosanquet, J. and Patteson, J.*

And where the prosecutor was decoyed into a house and chained

down to a seat, and was compelled by violence to write an order for the payment of money and the delivery of deeds; and the paper upon which the prosecutor wrote was in his hand half an hour, but he was chained down all the time.—It was held that, the paper never having been in the peaceable possession of the prosecutor, this was not an assault with intent to rob within the meaning of 7 & 8 G. 4. c. 29. s. 6. *R. v. Edwards and others*, 6 C. & P. 521. *Patteson, J. and Bosanquet, J.*

Rogues and Vagabonds.

See Vagrants.

Sabbath.

Page 1154. § 7.

By 7 & 8 G. 4. c. lxxv. s. 1., so much of the 29 Car. 2. c. 7., as prevents travelling by water on a Sunday, is repealed; and new regulations are made by section 42. *et seq.* And see *Sunday*, 1270; *Watermen*, 1371.

Sacrilege.

Page 1156. § 3.—A dissenting chapel or meeting-house is not within the meaning of the 7 & 8 G. 4. c. 29. s. 10. *R. v. Warren and Spencer*, 6 C. & P. 335. n. (a.) *Gaselee, J. and Vaughan, B.*

Dissenting chapel.

The 5 & 6 W. 4. c. 81. repeals the punishment of death for sacrilege imposed by 7 & 8 G. 4. c. 29. s. 10.—and enacts that all persons guilty of such offence, “or of aiding, abetting, counselling, or procuring the commission thereof,” shall be liable to be transported for life, or for not less than seven years, or to be imprisoned with or without hard labour for any term not exceeding four years.

Punishment.

Seamen.

Page 1161.

See *Assault*, *ante*, p. 1496.

By the 5 & 6 W. 4. c. 19. s. 40. After reciting that great mischiefs had arisen from masters of ships leaving seamen in foreign parts who have been thus reduced to distress and thereby tempted to become pirates, or otherwise misconduct themselves, and that it was expedient to amend and enlarge the law in this behalf;—it is

Master of a ship forcing on shore or leaving behind any person belonging to his crew.

Sentence.

Misdemeanor.

Jurisdiction of courts to try such offences, &c.

Commissions for examination of witnesses may be issued.

therefore enacted, that if any master of a ship belonging to any subject of the *United Kingdom* shall force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in any place in or out of his Majesty's dominions, any person belonging to his crew, before the return to or arrival of such ship in the *United Kingdom*, or before the completion of the voyage or voyages for which such person shall have been engaged, whether such person shall have formed part of the original crew or not, every person so offending shall be deemed guilty of a misdemeanor, and shall suffer such punishment by fine or imprisonment, or both, as to the court before which he shall be convicted shall seem meet, and the said offence may be prosecuted by information at the suit of the Attorney General on behalf of his Majesty; or by indictment or other proceeding in any court having criminal jurisdiction in his Majesty's dominions at home or abroad, where such master or other person as aforesaid shall happen to be, although the place where the offence may be therein averred to have been committed (which averment is hereby required to be substantially according to the fact) shall appear to be out of the ordinary local jurisdiction of such court, and such court is hereby authorized to issue a commission or commissions for the examination of any witnesses who may be absent or out of the jurisdiction of the court, and at the trial the depositions taken under such commission or commissions, if such witnesses shall be then absent, shall be received in evidence.

Second Offence.

Page 1167.

Proof of previous conviction.

The judges have had a meeting on the subject (at which thirteen of them were present), and have held that where a prisoner is indicted for a felony, after a previous conviction, the previous conviction must be proved, before the prisoner is called on for his defence. *Per Park, J. in R. v. William Jones*, 6 C. & P. 391.

Sentence.

Page 1170.

See **Capital Punishment**, *ante*, p. 1512.

Upon persons convicted before, but sentenced after the repeal of capital punishment for their offences.

The 2 & 3 W. 4. c. 62. repeals the punishment of death for certain offences, and substitutes the punishment of transportation for life. The words of the statute, imposing the substituted punishment, are—"that, from and after the passing of this act, every person convicted of any of the felonies," &c. shall be transported for life.

Several persons having been convicted before the passing of that act of felonies, which, at the time of conviction, were punishable with death; but for which that act imposes the lesser punishment of transportation for life, and they not having been sentenced at the time it came into operation,—it was held that the substituted punishment being, by the act, imposed upon persons "*convicted*," and not upon

persons "*who shall be convicted*," the punishment of transportation for life was the proper sentence for such persons convicted before, but sentenced after the passing of that act. *R. v. Mary Lewis and several others*, *R. & M. C. C.* 372.

A defendant having been sentenced at the assizes, under 11 *G. 4.* Amendment. & 1 *W. 4. c. 70. s. 9.*, cannot apply to the court of King's Bench to amend the judgment, by diminishing the punishment, upon ordinary affidavits in mitigation of punishment,—or without showing some specific defect in the sentence,—or some matter which could not have been adduced at the assizes. *R. v. Lloyd Burnell and others*, 4 *B. & Ad.* 135.

Where an indictment had been found at the quarter sessions, removed by *certiorari* into the King's Bench, and was tried at the assizes, affidavits in mitigation being offered, *Patteson, J.* said— "After the trial of a traverse on the crown side of the assizes, affidavits are never put in; and this act of parliament is, in my judgment, not only intended to relieve the court of King's Bench, but to put these cases in the same situation as traverses. I do not mean to say that affidavits might not be received after the trial of a traverse, under very special circumstances; for, although I know of no case in which such affidavits were used, yet there is, I believe, no instance in which they have been tendered and refused. In this case, I think it would be better to have no affidavits on either side, as I do not see how they would be of any use." *R. v. Cox and others*, 4 *C. & P.* 538. Affidavits in mitigation.

Servants.

Page 1173. § 12.

A master is criminally answerable for the illegal act of his servant, if such act is done by the servant within the scope of his probable authority, and was solely for the master's benefit. Thus, where after the detection of some smuggled tobacco concealed in the master's cellar, which it appeared had been put there with the master's knowledge, his servant, unknown to him, procured a permit, by which the servant intended to protect the goods from seizure; the master was held liable, for the penalty attached to the offence of unduly using a permit. For the whole attending circumstances in this case, it was observed, clearly shewed it to be that of the servant of a fraudulent master, attempting to conceal his master's offence, and to avert its consequences. And where the master is thus engaged in carrying on an illegal traffic, if the servant adopts means calculated to save the master, and which can have no other object, the act of the servant must be taken to be committed by him in the service, and for the benefit of such a master, and to be within the authority probably given by him in such a conjuncture. *Attorney-general v. Siddon and Binns*, 1 *Tyr.* 41. Responsibility of masters.

Sessions.

Page 1185.

Court of Oyer
and Terminer.

The court of quarter sessions is a court of oyer and terminer, and is not a court of inferior jurisdiction. *Per Lord Tenterden, in R. v. Smith and others*, 8 B. & C. 341.

Justices may
hold sessions as
often as they
think proper.

The king has power to issue commissions requiring the justices to hold sessions for the trial of offences, and, if he does so, they may meet for the purpose at as many different times as they think proper. *R. v. Mullaney, Reddy, and others*, 6 C. & P. 96. *Patteson, J. delivering the opinion of himself, Tindal, C. J., Bayley, B., and Gurney, B.*

No restriction
in the commis-
sion.

There is no restriction at all in the commission of the peace as to the days or number of sessions; and the justices, therefore, have power to originate as many sessions as they please. And they are not restricted by any act of parliament. *Id.*

Power to fix the
Easter Sea-
sions.

By 4 & 5 W. 4. c. 47. Justices at the Epiphany sessions may name two of themselves to fix the day for holding the next general quarter sessions not earlier than the 7th day of March, nor later than the 22nd day of April. Where no day is fixed by the justices under this act, the sessions are to be held as directed by 11 G. 4. & 1 W. 4. c. 70.

And see *Adjournment*, ante, p. 1487, and *Mandamus*, ante, p. 1681.

Of Borough Sessions.

His Majesty
may grant a
separate court of
quarter sessions
and appoint a
recorder in cer-
tain boroughs.

By the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*), sect. 103. The council of every borough which shall be desirous that a separate court of quarter sessions of the peace shall be or continue to be holden in and for such borough shall signify the same by petition to his Majesty in council, setting forth the grounds of the application, the state of the gaol, and the salary which they are willing to pay to the recorder in that behalf; and it shall be lawful for his Majesty, if he shall be pleased thereupon to grant that a separate court of quarter sessions of the peace shall be thenceforward holden in and for such borough, to appoint for such borough, or for any two or more of such boroughs conjointly, a fit person, being a barrister at law of not less than five years standing, who shall be and be called the recorder of such borough or boroughs, and shall hold such office during his good behaviour, and upon any vacancy in any such office to appoint another fit person, being a barrister at law of not less than five years standing, to be the recorder in the place of the person so making such vacancy; and the council of every such borough shall appoint a fit person to be clerk of the peace during his good behaviour, and the recorder for the time being of any borough shall be a justice of the peace of and for such borough, although he may not have such qualification by estate as is required by law in the case of any other person being a justice of the peace for a county; and such recorder shall have precedence in all places within the borough of which he may be the recorder next after the mayor thereof; and in such case it shall be

Recorder to be
a justice of the
peace for the
borough.

lawful for his Majesty to direct that an annual salary, not exceeding the sum stated in the petition of the council, shall be paid to such recorder, by the treasurer of such borough out of the borough fund: provided that no person being such recorder as aforesaid shall be eligible to serve in parliament for such borough, nor shall he be an alderman, councillor, or police magistrate of such borough:— provided that nothing in the act shall disqualify any such recorder from being appointed a barrister to revise any list of voters under the provisions of the 2 & 3 W. 4. c. 45. or from being eligible to serve in parliament, otherwise than is therein-before provided:—provided also, that in every borough in and for which a separate court of general or quarter sessions of the peace was then holden, and of which their recorder or deputy recorder was a barrister of five years standing, such recorder or deputy recorder, being qualified as aforesaid, shall be continued or appointed recorder under the provisions of the act:—provided also, that in the case of sickness or unavoidable absence, the recorder of any borough shall be empowered, under his hand and seal, with the consent of the council of such borough, to appoint a deputy recorder, being a barrister of five years standing, to act for him at the quarter sessions of the peace then next ensuing, and no longer or otherwise.

Recorder not to be member of parliament, &c. for the borough.

By *sect. 104.* No recorder or justice shall be capable of acting until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate, and shall have made the declaration thereby required, respecting which see *Justices, ante, p. 1660.*

Recorder and justices to take certain oaths, &c.

By *sect. 105.* The recorder of every borough shall hold once in every quarter of a year, or at such other and more frequent times as the said recorder in his discretion may think fit, or as his Majesty shall think fit to direct, a court of quarter sessions of the peace in and for such borough, of which court the recorder of such borough shall sit as the sole judge; and such court of quarter sessions of the peace shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatsoever cognizable by any court of quarter sessions of the peace for counties in *England*, and the said recorder shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being such sole judge, as fully as any such last-mentioned court: provided nevertheless, that no recorder, by virtue of his office, shall have power to make or levy any county rate, or rate in the nature of a county rate, or to grant any licence or authority to any person to keep an inn, alehouse or victualling house, to sell exciseable liquors by retail, or to exercise any of the powers therein vested in the council of such borough.

Recorder to hold sessions of which he is to be the sole judge.

Recorder not to make or levy county rate.

By *sect. 106.* In the absence of the recorder and deputy recorder the mayor shall at the times appointed for the holding of such court of quarter sessions open the court, and adjourn over the holding of the same, and respite all recognizances until such further day as such mayor shall cause to be proclaimed.

In the absence of the recorder the mayor to open and adjourn the court.

By *sect. 124.* The council of every borough shall make tables of the fees which shall be taken by the clerk of the peace in those boroughs in which a separate court of quarter sessions of the peace shall be holden; and in those boroughs to which a commission of the peace shall have been granted, a table of the fees to be taken by the clerk to the justices; and such tables of fees shall be submitted to

Fees payable to the clerk of the peace, &c.

Sheriff.

one of his Majesty's principal secretaries of state; and when such tables of fees shall be confirmed and allowed by such secretary of state, either as such table shall have been submitted to him, or with such alterations, additions, or abatements as he shall think proper, the fees therein mentioned may thenceforth be lawfully taken by the persons therein named to be entitled thereunto; and that until tables of the fees so to be taken in any such borough shall have been made and confirmed, clerks of the peace and clerks to the justices of such boroughs, are to take the fees authorized to be taken by the clerk of the peace and clerk to the justices for the county within or adjoining to which such borough is situated.

Table of fees to
be hung up.

And by *sect. 125*. The town clerk of every borough shall cause a true copy of the tables of fees in force for the time being to be hung up in a conspicuous part of the room in which the court of quarter sessions for the borough shall be held.

Sewers.

Page 1196. § 5.

Rate.

Commissioners of sewers may make a rate to defray the expenses of works already done; and, in order to justify such a rate, it is not necessary, that there should have been a previous presentment by a jury of those works. Neither is it any valid objection to such a rate, that it is only to defray the *previous* law expenses of the commission; if they are *bond fide* incurred by the commissioners in the discharge of their duty. Nor that the rate is in the alternative, to defray the expenses of works done, *or to be done*; for the word "or" must, in this case, be read "and." *R. v. Commissioners of Sewers for the Tower Hamlets*, 1 B. & Ad. 322.

The law on this subject has been very considerably altered and improved by the 3 & 4 W. 4. c. 22., which see.

Sheriff.

Page 1197.

By the 3 & 4 W. 4. c. 99. s. 1. so much of the 3 G. 1. c. 15. as authorises the officers therein mentioned to take the fees therein named, and also the 3 G. 1. c. 16. are repealed.

Sheriffs not to
sue out any pa-
tent, &c.

By *sect. 2*. Sheriffs need not sue out any patent or writ of assistance, nor shall any sheriff or bailiff make or pay proffers, nor have any day of prefixion, or be apposed, nor take any oath before the cursitor baron to account, or account or be cast out of court in the Exchequer.

Appointment.

By *sect. 3*. The appointment of sheriffs to be by warrant, signed by the clerk of the privy council, and by notice in the Gazette.

By *sect. 4*. A duplicate warrant of appointment shall be sent to the clerk of the peace and enrolled by him.

Under-sheriff.

By *sect. 5*. Every sheriff shall appoint an under-sheriff by writing under his hand, and transmit a duplicate of the appointment to the

peace. Appointment and duplicate not to be liable to any stamp. Enrolment fee 5s.

By *sect. 6.* Sheriffs and under sheriffs to take the usual oath before a baron of the Exchequer or justice of the peace. Oath.

By *sect. 7.* Sheriff, &c., going out of office to turn over prisoners, writs, &c. to incoming sheriff, by signed schedule without indenture. Turning over prisoners.

Sects. 8, 9, 10, and 11. regulate the mode of passing sheriffs accounts. Accounts.

By 5 & 6 *W. 4. c. 28.* No person appointed sheriff of a city or town which is a county of itself, shall be liable to make the declaration required by the 9 *G. 4. c. 17.* Oath of a city sheriff.

By the 5 & 6 *W. 4. c. 76.* (*for the regulation of municipal corporations*) *sect. 61.* It is enacted that in the city of *Oxford*, in the town of *Berwick-upon-Tweed*, and in the counties of the cities of *Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, and York*, and in the counties of the towns of *Caermarthe, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton*, the council shall, on the first day of *November* in every year, appoint a fit person to execute the office of sheriff, with the like duties and powers as the sheriff or the person filling the office of sheriff in the said town and counties respectively would have had if that act had not passed; and every person who, at the time of the passing of that act, should hold the office or execute the duties of sheriff in the said town and counties respectively should continue to hold and execute the same until the first appointment of a sheriff therein under the provisions of that act, and no longer. Councils of cities and towns which are counties to name a sheriff.

Page 1200. § 18.—A sheriff is not bound to execute a criminal who is sentenced to death in his county, if such criminal is not in his custody; and if it is intended by the court which passed the sentence that the sheriff should do execution, there should be a special mandate to the party having the prisoner in his custody to deliver him to the sheriff, and another to the sheriff to receive the prisoner and do execution. *R. v. Antrobus, (Trial at Bar, K. B.) 6 C. & P. 784.* Not bound to execute a criminal not in his custody

On a question whether, by custom, a sheriff of the county is exempt from the duty of executing criminals in his county, and whether by custom the sheriffs of a city are bound to do it; evidence of reputation is not receivable. *Id.*

On the trial of an information against a sheriff for refusing to execute a criminal, the warrant to a former sheriff commanding him to gibbet an offender, and a craving by that sheriff of an allowance of his expenses in so doing, which were allowed by the Chancellor of the Exchequer, are receivable in evidence. *Id.*

Ships.

Page 1203.

In a case which happened before the repeal of the 6 *G. 4. c. 110.* it was held that the vendee of a share in a ship shall be deemed complete part owner upon proof of an entry of the bill of sale to him in the proper book of registry according to the form prescribed 6 *G. 4. c. 110. s. 37.* although the entry does not in terms express that Transfer of share.

Smuggling.

the bill of sale was produced; because it would be against the duty of the officer to make the entry except on such production. *R. v. William Philp, R. & M. C. C. 263.*

Date of entry. The date at the commencement of that entry *having no other application*, must be presumed to apply to the date of the production of the bill of sale. *Id.*

Two or more persons may hold a sixty-fourth share of a ship jointly. *Id.*

Intent of burning. The burning or destruction of a ship by a part owner shews an intent to prejudice the other part owners, although he has insured *the whole ship* and has promised that the other part owners shall have the benefit of the insurance. *Id.*

Indictment for setting fire. An indictment under 7 & 8 G. 4. c. 30. s. 9. for setting fire to a vessel must aver that it was done with the intent to injure the owners, &c. *R. v. William Smith, 4 C. & P. 569. Alderson, J. and Gaselee, J.*

Indictment for damaging. In an indictment under *sect. 10.* of the same act, for damaging a vessel, if the indictment state how the injury was done, it need not state that it was done "otherwise than by fire." *R. v. Boyer and others, 4 C. & P. 559. Patteson, J.*

What is a vessel. Upon an indictment for damaging a vessel under *sect. 10.* it appeared that the vessel was a small pleasure boat, about eighteen feet long. *Patteson, J.* said, "I incline to think that this boat is within this clause of the act of parliament; but as the word vessel must have the same construction in all other acts of parliament, it might lead to inconvenience; and therefore, if necessary, I will take the opinion of the judges upon it." The further consideration of the point was however rendered unnecessary, the prisoners having been acquitted. *Id.*

And in another case, *Alderson, J.* intimated a doubt whether a barge was a vessel within the meaning of the act of parliament, and said he would reserve the point, but in that case also the farther consideration of it became unnecessary. *R. v. William Smith, 4 C. & P. 569.*

Regulations for passage vessels. Page 1207. § 27.—By the 5 & 6 W. 4. c. 53. the 9 G. 4. c. 21. has been repealed, and further provisions made for regulating the carriage of passengers from the United Kingdom.

By 3 & 4 W. 4. c. 50. the several acts relating to the customs and shipping have been repealed, and the law relating to ships has been consolidated and amended by 3 & 4 W. 4. c. 54. "for the encouragement of British navigation;" and 3 & 4 W. 4. c. 55. "for the registering of British vessels."

Smuggling.

Page 1222.

The several acts relating to smuggling have been repealed by the 3 & 4 W. 4. c. 50., and the law consolidated and amended by 3 & 4 W. 4. c. 53.,—and this latter act has been amended by the 4 & 5 W. 4. c. 13.

Disposal of smuggled goods By 3 & 4 W. 4. c. 53. s. 42. if smuggled goods are stopped by

police officers on suspicion of having been stolen ; but police officers may retain them until after the trial of the persons charged with stealing them. Notice of the detention to be given to the commissioners of the customs, and after the trial the goods are to be conveyed to the custom-house warehouse. Penalty for police officers neglecting to convey any such goods to such warehouse 20*l*.

stopped on suspicion of having been stolen.

By *sect. 53*. No person shall, after sunset and before sun rise, between the 21st *September* and the 1st *April*, or after the hour of eight in the evening and before the hour of six in the morning, at any other time in the year, make, aid, or assist in making any signal in or on board or from any vessel or boat, or on or from any part of the coast or shore of the United Kingdom, or within six miles of any part of such coast or shores, for the purpose of giving any notice to any person on board any smuggling vessel or boat, whether any person so on board of such vessel or boat be or be not within distance to notice any such signal ; and if any person contrary to the true intent and meaning of that act, make or cause to be made, or aid or assist in making any such signal, such person so offending shall be guilty of a misdemeanor.—And it shall be lawful for any person to stop, arrest, and detain the person or persons who shall so offend, and to carry and convey such person or persons so offending before any one or more of his Majesty's justices of the peace residing near the place where such offence shall be committed, who, if he sees cause, shall commit the offender to the next county gaol, there to remain until the next court of oyer or terminer, great session or gaol delivery, or until such person or persons shall be delivered by due course of law.—And it shall not be necessary to prove, on any indictment or information, that any vessel or boat was actually on the coast.—And the offender or offenders being duly convicted thereof shall, by order of the court before whom such offender or offenders shall be convicted, either forfeit and pay the penalty or forfeiture of 100*l*., or, at the discretion of such court be sentenced or committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year.

Persons making signals to smuggling vessels.

Misdemeanor. Any person may arrest offenders.

Proof that a vessel was on the coast unnecessary.

Punishment.

By *sect. 54*. The burthen of proof that a signal was not made with such intent as aforesaid shall lie upon a defendant against whom any charge shall be made or indictment found.

Onus probandi.

By *sect. 55*. Any person may prevent signals being made, and may go upon lands, &c. for that purpose.

Prevention of signals.

By *sect. 58*. If any persons, to the number of three or more, armed with fire arms or other offensive weapons shall, within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be assembled, in order to be aiding and assisting in the illegal landing, running, or carrying away of any prohibited goods, or any goods liable to any duties which have not been paid or secured :—or in rescuing or taking away such goods as aforesaid after seizure, from the officer of the customs or other officer authorized to seize the same ; or from any person or persons employed by them, or assisting them ; or from the place where the same shall have been lodged by them ;—or in rescuing any person who shall have been apprehended for any of the offences made felony by that or any act relating to the customs, or in the preventing the apprehension of any person who shall have been guilty of such offence,—or in case any persons, to the number of three or more, so armed as aforesaid, shall,

Three or more persons armed assembling to assist in the illegal landing of goods, or rescue of goods seized, &c. or the rescue of offenders, &c.

within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting,—every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of *felony*, and suffer *death* as a felon.

Felony.

Death.

Shooting at boats, or shooting at and maiming, &c. any person in the preventive service.

By *sect. 59*. If any person shall maliciously shoot at any vessel or boat belonging to his Majesty's navy, or in the service of the revenue, within one hundred leagues of any part of the coast of the United Kingdom, or shall maliciously shoot at, maim, or dangerously wound any officer of the army, navy, or marines, being duly employed for the prevention of smuggling and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty, every person so offending, and every person aiding, abetting, or assisting therein, shall, being lawfully convicted, be adjudged guilty of felony, and suffer death as a felon.

Felony.

Death.

Being in company with four other persons having prohibited goods or with one armed.

By *sect. 60*. If any person, being in company with more than four other persons, be found with any goods liable to forfeiture, under that or any other act relating to the revenue of the customs or excise, or in company with one other person, within five miles of the sea coast, or of any navigable river leading therefrom, with such goods, and carrying offensive arms or weapons, or disguised in any way, every such person shall be adjudged guilty of felony, and shall, on conviction of such offence, be transported as a felon for the space of seven years.

Felony.

Punishment.

Assaulting officers, &c.

By *sect. 61*. If any person shall, by force or violence, assault, resist, oppose, molest, hinder, or obstruct any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling in the due execution of his or their office or duty, such person being thereof convicted, shall be transported for seven years, or sentenced to be imprisoned in any house of correction or common gaol, and kept to hard labour for a term not exceeding three years, at the discretion of the court before whom the offender shall be tried and convicted as aforesaid.

Punishment.

Offences on the high seas to be deemed to have been committed at the place into which the offenders are brought, or in which they are found.

By *sect. 77*. In case any offence shall be committed upon the high seas against that or any other act relating to the customs, or any penalty or forfeiture shall be incurred upon the high seas for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, at the place on land in the United Kingdom or the Isle of Man, into which the person committing such offence, or incurring such penalty or forfeiture, shall be taken, brought, or carried, or in which such person shall be found; and in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the county within which such city, borough, liberty, division, franchise, or town corporate, is situated, shall have jurisdiction to hear and determine all cases of offences against such act so committed upon the high seas, any charter or act of parliament to the contrary notwithstanding:—Provided, always, that where any offence shall be committed in any place upon the

water not being within any county of the United Kingdom, or where any doubt exists as to the same being in any county, such offence shall, for the purpose of this act, be deemed and taken to be an offence committed upon the high seas.

By *sects.* 108 & 109. Wherever any person shall be charged with any offence against that act, for which he may be prosecuted by indictment or information, in the court of King's Bench, and the same shall be made to appear to a judge by affidavit, &c. such person may be held to bail by a judge's warrant, and for want of bail may be committed to prison. Indictments or informations may be served upon the gaolers with notice to appear and plead. If defendants shall neglect to appear and plead, appearance and plea of not guilty may be entered for him. Defendants acquitted may be discharged by any judge.

Apprehension of offenders by judges warrant, &c.

By *sect.* 112. No indictment shall be preferred or suit commenced (except in cases of persons carried before one justice) unless in the name of the Attorney General, &c. &c.

Indictment to be in the name of Attorney-General.

By *sect.* 113. The Attorney General, &c. may enter a *nolle prosequi*, if satisfied that any fine, &c. was incurred, without intention of fraud.

By *sect.* 118. Evidence of officers of the customs, excise, &c. having acted as such, to be sufficient without producing their appointments, and they are to be competent witnesses.

Officers competent witnesses.

By *sect.* 120. Suits, &c. shall be commenced within three years.

By *sect.* 122. Indictments, &c. may be tried in any county.

Limitation of suits, &c.
Venue.
Writ of assistance.

Page 1226. § 30.—Where a writ of assistance, under the provisions of the 6 G. 4. c. 108. s. 40., was addressed to certain officers therein mentioned, and to all other his majesty's officers, ministers, and subjects in *England* and *Wales*; which (after setting out the commission of the officers of the customs, empowering them to enter and search any house, shop, &c. where smuggled goods were, or were suspected to be concealed, to appoint officers, and to do all other things necessary for his majesty's service in such cases, according to law,) commanded the several persons to whom the writ was directed to permit and suffer the commissioners of customs, their deputies, servants, and officers, to enter and search the houses, shops, &c. where smuggled goods were, or were suspected to be concealed, and to do all things which ought to be done in that behalf, according to the commission, and the laws of the realm; and all persons addressed by the writ were to assist in the execution of the premises;—it was held, that this writ did not confer a general and absolute authority to enter and search houses for smuggled goods; but that such entry and search must be justified, by reference to the event, or to probable cause. *R. v. Watts*, 1 B. & Ad. 166. And see *Lord Tenterden's judgment*, *Id.* 175. and note (a), 178. as to the law of writs of assistance.

In the case of an indictment, under the repealed act of 6 G. 4. c. 108. s. 56., it was proved that persons assisting in landing smuggled goods were armed with poles, termed bats, which smugglers use in carrying their goods, but they *might* also be used offensively, and it was held to be a question for the jury, whether these bats were "offensive weapons" or not. *R. v. Noakes*, 5 C. & P. 326. *Littledale, J., Bolland, B., and Alderson, J.*

Offensive weapons.

And see *Servants*, ante, p. 1727.

Sodomy.

Page 1235.

Penetration
sufficient.

This crime is complete if there be penetration, although there be no emission. *R. v. Reekspear, R. & M. C. C. 342. R. v. Cozens, 6 C. & P. 351. Park, J. S. P.*

And see *Rape, ante*, p. 1714.

Stage Carriages.

Page 1247.

Persons insert-
ing a false
name, &c. in a
requisition or
license.

By the 2 & 3 W. 4. c. 120. s. 10. If any person applying for, or procuring, or attempting to procure any license, under that act, for, or in respect of any stage carriage, shall use or employ any false or fictitious name, or place of abode, or other false or fictitious description of any person or supposed person,—or shall insert, or cause to be inserted in any requisition, for any such license, or in any such license, any false or fictitious name or place of abode, or other false or fictitious description of any person or supposed person, as being the proprietor or part proprietor of the stage carriage, for or in respect of which such license shall be applied for, or procured,—or shall wilfully or knowingly insert, or cause to be inserted in any such requisition, or in any such license, as aforesaid, the name of any person, as being proprietor or part proprietor of such carriage, who shall not, at the time of the application for such license, be, in fact, a proprietor or part proprietor of such carriage;—the person so offending, shall be guilty of a misdemeanor, and shall be liable to be punished by fine or imprisonment, or by both; such imprisonment to be in the common gaol, or house of correction, and either with, or without hard labour.

Misdemeanor.
Punishment.

Officers to be
competent wit-
nesses.

And by *sect. 112*. Upon the trial, or hearing of any information or complaint under that act, officers of stamp duties and others shall be competent witnesses, notwithstanding they may be entitled to any part of any penalty, &c.

Stamps.

Page 1251.

Licenses to
deal in stamps.

By the 3 & 4 W. 4. c. 97. ss. 1, 2, 3, 4, 5, &c. Provisions are made for granting licenses to persons to deal in stamps; and unlicensed persons, selling stamps, are to forfeit 20*l*.

And see *Forgery, III. ante*, p. 1613.

In what cases a
stamp is mate-
rial.

If a written instrument is charged to be part of a fraud, or other crime, it is immaterial whether it is stamped or not. *R. v. Fowle and Elliott, 4 C. & P. 592. Lord Tenterden, C. J.*

Where an indictment is founded on a written instrument, and where the instrument itself is the crime, the instrument is admissible in evidence, although unstamped; but where the indictment is for

an offence distinct from the instrument, and the instrument is only introduced collaterally, it is not admissible without a stamp. *R. v. Eliza Smyth and others*, 5 C. & P. 201. *Lord Tenterden, C. J.*

Statutes.

Page 1254.

A statute passed in a session of parliament, begun in the second and continued in the third year of a king's reign, must not be pleaded as passed in the second and third years of that reign, although such act is recited in a later statute as having been "passed in the second and third years," &c. and where an indictment for conspiracy stated an act to have been passed "in the second and third years," &c. adding the title of the act correctly, judgment was arrested for the misrecital. *R. v. John Biers and another*, 1 A. & E. 327.

Mis-recital of a statute.

Where two acts of parliament passed during the same session, but receiving the royal assent on different days, are in some respects repugnant to each other, that which last received the royal assent must prevail, and, *pro tanto*, repeal the other. *R. v. The Justices of Middlesex*, 2 B. & Ad. 818.

Inconsistent acts of the same sessions.

Street Acts.

Page 1267.

See *Police of the Metropolis*, and *stat. 3 & 4 W. 4. c. 19.*

Surety for the Peace.

Page 1271.

The court of King's Bench cannot interfere to reduce the amount of security which magistrates may require of a person for the preservation of the peace. They are conservators of the peace, the amount of security is in their discretion, and the court cannot interfere to control that discretion. *R. v. Holloway*, 1 Dow, P. C. 525.

Amount of security.

Term.

Page 1283.

The court of King's Bench has no authority, even by consent, to alter the judgment of a preceding term, a writ of error is the only remedy. *R. v. Richard Carlile, in Error, from the O. B. S.* 2 B. & Ad. 971. And see *Amendment*.

By 1 W. 4. c. 3. s. 1. So much of the 11 G. 4. & 1 W. 4. c. 70. as relates to the appointment of essoign days is repealed.

When writs are to be returnable.

By *sect. 2.* It is enacted that all writs then usually returnable before any of his Majesty's courts of King's Bench, Common Pleas, or Exchequer, respectively, on general return days, made returnable after the 1st of January, 1831, may be made returnable on the third day exclusive before the commencement of such term, or on any day not being a Sunday between that day and the third day exclusive, before the last day of term; and the day of appearance shall, as theretofore, be the third day after such return exclusive of the day of the return; or in case such third day shall fall on a Sunday, then on the fourth day after such return, exclusive of such day of return.

For removing doubts as to duration of terms.

By *sect. 3.* Reciting that it was expedient to remove all doubts that might exist as to the duration of the terms in any case that might occur, it is therefore declared and enacted, That in case the day of the month on which any term, according to the 11 G. 4. & 1 W. 4. c. 70. was to end, shall fall to be on a Sunday, then the Monday next after such day shall be deemed and taken to be the last day of term, and that in case any of the days between the Thursday before, and the Wednesday next after Easter, shall fall within Easter term, then such days shall be deemed and taken to be a part of such term, although there shall be no sittings, *in banco*, on any of such intervening days.

Thames.

Page 1284.

Offences committed on board the hospital-ship of the Seamen's Hospital Society to be tried in the city of London.

By the 3 & 4 W. 4. c. 9. s. 25. All felonies and misdemeanors, which shall be at any time or times committed on board any hospital ship, in the occupation of, or belonging, or to belong to the corporation of the *Seamen's Hospital Society*, and which shall at any time be moored in any part of the river *Thames*, above *Gravesend*, or in respect of any property attached to the same, shall (whether the ship shall be, at the time of the offence committed, afloat or aground) be triable in the city of *London*, and not elsewhere, and may, in the indictment, information, warrant, and all other proceedings respecting the same, be alleged to have been committed in the city of *London*, except in case of summary conviction, which may take place either on board the ship, or on either shore, and the offender for the time being shall be committed to one of the prisons in the city of *London*; but which commitment may, in any case, take place by any of his majesty's justices of the peace, either of the city of *London*, or of either of the counties of *Middlesex*, *Kent*, *Surrey*, or *Essex*, or in case of riot, assault, battery, or breach of the peace on board any such hospital ship, then by a committee-man, or committee-men of the said corporation; in all which cases any of such justices of the peace are thereby empowered to act out of their respective counties or jurisdictions, in as full and ample manner as they are empowered in other cases to act within their respective jurisdictions, and shall have all the privileges, immunities, and indemnities they would have if acting in their own respective counties or jurisdictions.

Threats and Threatening Letters.

Page 1292.

If a person be indicted for sending a threatening letter, the court will, on motion (after the indictment is found), order the letter to be deposited with the officer of the court, in order that the prisoner's witnesses may have an opportunity of inspecting it. *R. v. Harris, O. B. S., 6 C. & P. 105. Bolland, B. and Littledale, J.*

Inspection of letter by prisoner's witnesses.

Page 1294. § 7.—Where an anonymous letter stated, that the writer had overheard certain persons agree together to do a dreadful injury to the person, or the *building property* of the prosecutor; and that if thirty sovereigns were laid in a particular place, the writer would give such information as would frustrate the attempt; it was held, by the twelve judges, that this was not a threatening letter within the 7 & 8 G. 4. c. 29. s. 8., inasmuch as it could not be said to contain either a *demand*, or a *menace*, from the writer; notwithstanding it sufficiently appeared that the letter was a mere device to defraud the prosecutor of thirty sovereigns. *R. v. Andrew Pickford, 4 C. & P. 227.*

What is a threatening letter.

Upon an indictment, under 4 G. 4. c. 54., for sending a threatening letter, the following letter was given in evidence:—

Indictment.

“Sir,—You are a rogue, thief, and vagabone, and if you had your deserts, you should not live the week out. I shall be with you shortly, and then you shall nap it, my banker. Have a care old chap, or you shall disgorge some of your ill-gotten gains, watches, and cash, that you have robbed the widows and fatherless of. Don't make light of this, or I'll make light of you and yours.

“March 15th, 1831.”

“I am your CUT-THROAT.”

It was held that this letter so plainly conveyed a threat to kill and murder, as to render it unnecessary to insert either innuendoes or prefatory allegations in the indictment to explain its meaning. *R. v. Boucher, 4 C. & P. 562. Patteson, J.*

Page 1296. § 19.—On an indictment for sending a threatening letter, the prisoner's declarations of the meaning of the letter are admissible in evidence. *R. v. James Tucker, Ry. & M. C. C. 134.*

Evidence.

Transportation.

Page 1300.

By 2 & 3 W. 4. c. 62. s. 2. It is enacted that neither the governor or lieutenant-governor of any island, colony, or settlement, or any other person, shall give any pardon, or ticket of leave to any person sentenced to transportation, or who shall receive a pardon on condition of transportation, or any order or permission to suspend or remit the labour of any such person, except in cases of illness, until such person, if transported for seven years, shall have served four,—if

Limiting the time for granting pardons, &c. by governors, &c. of colonies.

Convicts not to be capable of holding property, &c.

transported for fourteen years, shall have served six,—or, if transported for life, shall have served eight years of labour,—and that no such person shall be capable of acquiring or holding any property, or of bringing any action for the recovery of any property, until after such person shall have duly obtained a pardon from the governor, or lieutenant-governor of the colony, or settlement, in which he or she shall have been confined; provided that nothing therein contained shall in any manner affect his majesty's royal prerogative of mercy.

Punishment of convicts found at large.

Page 1304. § 21.—By 4 & 5 W. 4. c. 67. So much of the 5 G. 4. c. 84. as inflicts the punishment of death upon persons found at large, who have been ordered to be transported, is repealed, and it is enacted that every person convicted of an offence, under 5 G. 4. c. 84. s. 22., or of aiding or abetting, counselling or procuring the commission thereof, shall be liable to be transported for life, and previously to be imprisoned, with, or without hard labour, for any term not exceeding four years

Treason.

I. Of the different Kinds of Treason.

Counterfeiting the great seal, &c.

Page 1320. § 18.—By the recent statute of 11 G. 4. and 1. W. 4. c. 66. s. 31., so much of the 1 Mary, st. 2. c. 6., as related to forging or counterfeiting the *sign manual*, the *privy signet*, or *privy seal*, is repealed. And by *section 2.*, if any person shall forge or counterfeit the *great seal* of the United Kingdom, his Majesty's *privy seal*, any *privy signet* of his Majesty, his Majesty's *royal sign manual*, any of his Majesty's *seals* appointed by the twenty-sixth article of the union, to be kept, used, and continued in *Scotland*, the *great seal of Ireland* or the *privy seal of Ireland*; every such offender is guilty of *high treason*, punishable with death. But nothing contained in the acts of 7 W. 3. c. 3., or 7 Ann. c. 27., shall extend to any indictment, or to any proceedings thereupon for any of the treasons before mentioned.

High treason.

III. Of the Trial, &c.

Defence by counsel.

Page 1331. § 7.—In the case of *R. v. Dennis Collins*, two counsel were allowed to address the jury on the behalf of the prisoner although they called no witness, and the prisoner afterwards made a statement. However, the attorney-general submitted to the court that unless witnesses were called, the junior counsel had no *right* to address the jury, and Mr. *Baron Gurney* seemed to be of that opinion, but the attorney-general did not press the objection. *R. v. Dennis Collins*, 5 C. & P. 305. *Bosanquet, J., and Gurney, B.*

Panel.

As soon as the grand jury have returned a true bill, the court will order the sheriff to furnish the solicitor to the treasury with a list of the persons to be summoned on the jury. *Id.*

Trial.

Page 1335.

See *tit. Counsel, ante*, p. 1580. and *Venue, post*, 1742.

If the prosecutor of an indictment in a case of a public nuisance, in keeping a common gaming-house, neglect to proceed to trial, any other person may do so and the court will not interfere to stop the proceedings, notwithstanding the prosecutor desire the proceedings to be stayed, alleging that the nuisance had been abated. *R. v. Thomas Jones Wood*, 3 B. & Ad. 657.

Where the prosecutor neglects to proceed.

And see *Record, ante*, p. 1718.

III. Of putting off the Trial.—p. 1340.

In a case of manslaughter, after the jury were charged, it was ascertained that the surgeon who had made the *post mortem* examination was absent. The prisoner's counsel applied to have the trial postponed, and it was held that if the prisoner's counsel prayed that the jury be discharged it might be done. The jury were then, at the prayer of the prisoner's counsel, discharged, and the prisoner was afterwards tried by another jury and convicted. *R. v. Stokes*, 6 C. & P. 151. *Tindal, C. J., and Gurney, B.*

Discharging jury and postponing trial.

Page 1341. § 3.—When the trial of an indictment for embezzlement was postponed, on the ground of the prosecutor being absent from *England* on private business of his own; *Littledale, J.* discharged the prisoner, on his own recognizance to appear at the next assizes. His counsel urged, that he ought to be allowed his costs; but the learned judge said, that costs were never paid to prisoners charged with felony. *R. v. Crowe*, 4 C. & P. 251.

When a prisoner discharged on his own recognizance.

Costs never paid to prisoners.

Vagrants.

Page 1349. Note †.

A man is not liable to be punished, under the 5 G. 4. c. 83. s. 3., for neglecting and refusing to maintain his wife, after she has left him and committed adultery; notwithstanding he himself has also been guilty of adultery since her departure. *R. v. Flintan*, 1 B. & Ad. 227.

Neglect to maintain wife.

Variance.

See *Statute, ante*, p. 1737.

Venue.

See *Indictment*, II., *ante*, p. 1651.

Changing the
venue.

Page 1359. § 26.—A motion to change the venue cannot be granted under any circumstances until issue is joined. *R. v. Forbes and others*, 2 *Dow*, P. C. 440.

An indictment for felony found at the *Suffolk* assizes, was removed into the court of King's Bench. A motion was made to award a venire into another county on a suggestion that a fair trial could not be had in *Suffolk*; in support of which affidavits were put in (*which had been sworn nearly a year before*,) stating that a strong prejudice existed in *Suffolk* against the defendants respecting the charge. But the court held that there was not sufficient grounds laid for removing an indictment from the body of a large county. *R. v. Holden and another*, 5 *B. & Ad.* 347.

Venue and trial
in counties of
cities and
towns.

Page 1359. § 27.—By the 5 & 6 *W. 4. c. 76.* (*for the regulation of municipal corporations*,) section 109., after reciting the 38 *G. 3. c. 52.*, it is enacted that so much of the said recited act as provides that nothing therein contained shall extend or be construed to extend to the city or county of the city of *Bristol*, or the city or county of the city of *Chester*, or to the criminal jurisdiction of the city of *Exeter* and county of the same city, is thereby repealed;—and that the town of *Berwick-upon-Tweed* shall be taken to be a county of a town corporate, and to be within all the provisions of the said recited act;—and that after the first of *May*, 1836, and until his Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any county of a city or town corporate, all bills of indictment for offences committed within such county of a city or town corporate shall be preferred, and all proceedings upon such indictments shall be had as in the said recited act is authorized to be done.

See *Sessions*, *ante*, p. 1728.

Warrant.

Page 1368.

Warrant to ap-
prehend upon a
certificate of in-
dictment found.

A justice of the peace may issue his warrant to apprehend a person upon a certificate of the clerk of the peace, that a bill of indictment for a misdemeanor had been found against the person so to be apprehended. *R. v. Stokes*, 5 *C. & P.* 148. *Park, J. and Paterson, J.*

It is the constant practice for judges at the assizes to grant warrants upon similar certificates by the clerk of arraigns. *Id.*

So also for judges of the court of King's Bench upon a certificate from the crown officer that a bill of indictment has been found. *Id.* And see 1 *Gules, Crown Off. Prac.* p. 85.

And a prosecutor of an indictment may obtain the usual crown office certificate of his bill, having been found for the purpose of taking out a judge's warrant against the defendant, without obtaining or paying for an office copy of the indictment. *R. v. Redfern*, 2 A. & E. 287.

Watchmen.

Page 1369.

The *stat. 11 G. 4. and 1 W. 4. c. 27.* has been repealed by the 3 & 4 W. 4. c. 90. but the latter act re-enacts the clauses contained in the former act relating to watchmen in nearly the same words. See *sections 39, 40, 41, and 42 of 3 & 4 W. 4. c. 90.*

By the 5 & 6 W. 4. c. 76. (*for the regulation of municipal corporations*) *section 76.* The council for any borough shall, from time to time, appoint a sufficient number of their own body, who, together with the mayor of the borough for the time being, shall be and be called the watch committee for such borough; and all the powers thereafter given to such committee may be executed by the majority of those present at any meeting, the whole number present being not less than three. And such watch committee shall, from time to time, appoint a sufficient number of fit men who shall be sworn in before some justice of the peace having jurisdiction within the borough to act as constables for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constableness by virtue of the common law of this realm, or of any statutes made or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

By *sect. 77.* The watch committee for any borough may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable by virtue of that act shall immediately cease; and no man so dismissed as aforesaid shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough.

A watch committee to be appointed in boroughs, to consist of the mayor and councilmen; such committee to appoint constables for the borough.

Constables to be for the county, &c. as well as borough.

Watch committee to make regulations for the management of the constables.

Power to constables to apprehend disorderly persons, &c.

By *sect. 78.* It shall be lawful for any constable during the time of his being on duty to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace to be dealt with according to law, or may give bail for his appearance before a justice of the peace, if the constable shall think fit to take bail, in the manner therein-after mentioned.

Constables attending at the watch-houses in the night may take bail by recognizance from persons brought before them for petty misdemeanors, such recognizance to be conditioned for the appearance of the parties before a magistrate.

In default of appearance, recognizance to be forfeited.

Time of hearing may be postponed.

Penalties on constables for neglect of duty.

By *sect. 79.* Where any person charged with any petty misdemeanor shall be brought without the warrant of a justice of the peace into the custody of any constable appointed under that act, during his attendance in the night-time at any watch-house within any borough, it shall be lawful for such constable, if he shall think fit, to take bail by recognizance, without any fee or reward, from such person, conditioned that such person shall appear for examination within two days before a justice of the peace within the borough at some time and place to be specified in the recognizance; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace; and the constable shall enter in a book, to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate, in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward.

By *sect. 80.* If any constable of any borough shall be guilty of any neglect of duty or of any disobedience of any lawful order, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceed-

ing forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet.

By *sect. 81.* If any person shall assault or resist any constable of any borough appointed under that act in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum not exceeding five pounds as the said justices shall think meet; Provided, that nothing therein contained shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment and also proceeded against under this act for the same offence.

Penalty for assaults on constables.

Proviso.

By *sect. 82.* The treasurer of every borough shall pay to the constables of such borough such salaries, wages, and allowances, and at such periods, as the watch committee for such borough shall, subject to the approbation of the council, direct, and the council shall order to be paid also any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice; and the said treasurer shall also pay such further sums as the watch committee shall, subject to the approbation of the council, award to any of the persons belonging to the said constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary force under this act.

Regulation and payment of expenses.

By *sect. 84.* As soon as constables shall have been appointed by the watch committee for any borough, a notice, signed by the mayor of such borough, specifying the day on which such constables shall begin to act, shall be fixed on the door of the town hall and every church within such borough; and on the day so specified in such notice so much of all acts made before the passing of that act, as relates to the appointment, regulation, powers, and duties, or to the assessment or collection of any rate to provide for the expenses of any watchmen, constables, patrol, or police for any place situated within such borough, shall cease and determine; and all watch-houses, watch-boxes, &c. shall be given up to such persons as shall be named by the said mayor in such notice, for the use and accommodation of the constables to be appointed under that act, and all the property so to be given up shall be deemed to belong to the body corporate of such borough; and in case any person shall neglect or refuse to give up the same, every such offender, being convicted thereof before two justices, shall for every offence forfeit over and above the value of the property not given up, not exceeding 5*l.*—and where there shall be any building, a part only of which shall have been used as a watch-house, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under that act; and if any person shall neglect or refuse to

On notice of appointment of constables, the present provisions in local acts as to watching, &c. to cease.

give up the same every such offender, being convicted thereof before two justices, shall for every such offence forfeit not exceeding 5*l*. provided that in case before the passing of that act a rate might be levied in any borough for the purpose of watching, conjointly with any other purpose, nothing in that act shall prevent the levying and collecting of such rate for such other purpose solely, provided that the amount of such rate so to be levied for such other purpose solely shall not exceed such proportion of any rate as shall appear to have been expended for such purpose other than watching by an average during the last seven years, or such less number of years as such rate shall have been levied.

Proviso as to rates in arrear, and as to debts.

By *sect. 85*. Any rate made previously to the day specified in such notice, shall be levied and collected as if that act had not been passed, and nothing therein contained shall prevent the levying and collecting of any rate for the purpose of paying any debt contracted before the passing of that act.

Watch committee to transmit a report quarterly to the Secretary of State, and also a copy of their rules, &c.

By *sect. 86*. The watch committee of every borough shall, on the 1st of January, the 1st of April, the 1st of July, and the 1st of October, in every year, transmit, to one of his majesty's principal secretaries of state, a report of the number of men appointed to act as constables or policemen in such borough, and of the description of arms, accoutrements, and clothing, and other necessities furnished to each man, and of the salaries, wages, and allowances payable to such constables or policemen, and of the number and situation of all station houses in such borough; and also a copy of all rules, orders, and regulations which shall from time to time be made by such watch committee, or by the council of such borough, for the regulation and guidance of such constables or policemen.

Weights and Measures.

Page 1375.

The 4 & 5 *W. 4. c. 49*. was passed for the amendment of the law on this subject, contained in 5 *G. 4. c. 74*. and 6 *G. 4. c. 12.*; but the 4 & 5 *W. 4. c. 49*. has been repealed, and the law still further altered and amended by the 5 & 6 *W. 4. c. 63*.

Wife.

Page 1377.

Her house is the property of her husband.

If a wife take a house, separately from her husband, it must, in point of law, be taken to be the house of the husband, and if burglary were to be committed in the house, it must be laid as the house of the husband. *R. v. Eliza Smyth and others, 5 C. & P. 201. Lord Tenterden, C. J.*

Not a trespasser in her husband's house, but may be guilty of a forcible entry.

A wife cannot be a *trespasser* in the house of her husband; but, if a wife enter the house of her husband with violence, or such a show of force as to prevent resistance, she will be guilty of a forcible entry. *Id.*

ADDENDA.

Manslaughter.

Page 876.

In order to make a person liable to an indictment for manslaughter, Negligence.
semble, that it is not sufficient that the defendant should have been merely guilty of "a negligent act of omission," unless the party is bound by law to do the act omitted, as providing food for a person of tender years. *R. v. Allen & Clarke*, 7 C. & P. 153. and *R. v. Green*, 7 C. & P. 156. *cor. Park, J. and Alderson, B.*

Although it is the duty of the captain of a steam boat to have a person on the look out to prevent the vessel running other vessels down, still he is not liable to an indictment for manslaughter, if, by *merely neglecting* so to do, the steamer runs down another vessel, whereby a man is drowned. *Id.*

If it could be shewn that the death of the deceased was the result of any *act of personal misconduct or personal negligence* on the part of the captain, he may be convicted of this offence. But there must be some *personal act*. *Id.*

